

APPENDIX 13 – CONTRACT

Contract Number KXXX

Dated _____, 2009

For a

Statewide Tolling

Customer Service Center Contract

Between the

Washington State Department of Transportation

and

<<Vendor >>

TABLE OF CONTENTS

ARTICLE I: RECITALS	1
ARTICLE II: DEFINITIONS; ACRONYMS	2
ARTICLE III: TERM	2
3.1 Term.....	2
3.2 Extension.....	2
ARTICLE IV: SCOPE OF SERVICES	2
4.1 Program Requirements.....	2
4.2 Program Management Plan.....	2
4.3 Vendor Organization.....	3
4.4 Program Schedule	3
4.5 Changes to Approved Program Schedule	3
4.6 Supplemental Work Plan – Additional Toll Facility	4
4.7 Deliverables and Services	4
ARTICLE V: PRICING; INVOICE; PAYMENT	6
5.1 Prices.....	6
5.2 Invoices	6
5.3 Reductions in Amounts Due	7
5.4 Price Adjustments	7
5.5 Price Warranty	8
5.6 No Advance Payments	8
5.7 Taxes	8
5.8 Withholding Payment	8
5.9 Holdback.....	8
ARTICLE VI: PROGRAM CHANGES.....	9
6.1 General.....	9
6.2 Change Order Process.....	9
6.3 Tracking Change Orders	10
6.4 Change Order Pricing	10
6.5 Extraordinary Changes Prices.....	11
6.6 Change Order Based Time Extensions	11
6.7 Proceed with Work	12
6.8 Failure or Refusal to Perform Changes.....	12
6.9 Vendor Dispute of Change Order	12
6.10 Protest by Vendor	12
ARTICLE VII: VENDOR’S RESPONSIBILITIES.....	12
7.1 Work	12
7.2 Delivery.....	13
7.3 Security	13

7.4	Coordination and Cooperation	13
7.5	Licensing Standards	14
7.6	Compliance with Laws	14
7.7	Non-Compliance	16
7.8	WSDOT Access and Inspection.....	16
ARTICLE VIII: SUBCONTRACTING		16
ARTICLE IX: TREATMENT OF ASSETS.....		18
ARTICLE X: CONTRACT MANAGEMENT AND ADMINISTRATION		18
10.1	Notices	18
10.2	Vendor Staff.....	19
10.3	WSDOT Staff.....	21
10.4	WSDOT Program Manager	22
10.5	WSDOT Contract Administrator	22
10.6	WSDOT Toll Program Executive Director.....	22
ARTICLE XI: INTELLECTUAL PROPERTY		23
11.1	Ownership	23
11.2	Intellectual Property Treatment	23
11.3	Software Enhancements.....	24
11.4	Intellectual Property Indemnification	24
11.5	Survival	25
ARTICLE XII: REPRESENTATIONS AND WARRANTIES		25
12.1	Vendor Commitments, Warranties and Representations	25
12.2	Products.....	25
12.3	Services	26
12.4	No Surreptitious Code.....	27
12.5	Authorization	27
12.6	Ability To Perform.....	27
12.7	Warranty Against Contingent Fees.....	27
12.8	OSHA/WISHA	28
12.9	Survival	28
ARTICLE XIII. INDEMNITY; INSURANCE; LETTER OF CREDIT.....		28
13.1	General Indemnification	28
13.2	Insurance	28
13.3	Waiver of Statutory Immunity	30
13.4	Letter of Credit.....	30
ARTICLE XIV. DEFAULT; TERMINATION; DAMAGES; REMEDIES		31
14.1	Vendor Default.....	31
14.2	WSDOT Termination for Rejection of Deliverables	32
14.3	WSDOT Termination for Convenience or Necessity	32
14.4	Vendor Termination for WSDOT's Nonpayment	33

14.5	Termination Procedure.....	34
14.6	Vendor Payments to WSDOT.....	34
14.7	Transition Support	34
14.8	Liquidated Damages	35
14.9	Non-Exclusive Remedies.....	35
14.10	Late Payment Fees	35
14.11	Damages Disclaimers and Limitations	36
14.12	Performance Measures.....	36
14.13	Suspension for Convenience.....	36
14.14	Cover.....	37
14.15	Claims	37
XV.	DISPUTE RESOLUTION	37
15.1	Initial Process.....	37
15.2	Dispute Review Board	38
XVI.	ARBITRATION AND LITIGATION	41
16.1	General Process.....	41
16.2	Binding Arbitration of Claims \$1,000,000 or Less.....	41
16.3	Procedures to Pursue Arbitration	41
16.4	Timing of Arbitration.....	41
16.5	Litigation of Claims in Excess of \$1,000,000.....	42
XVII.	RECORDS; AUDITS; PUBLIC RECORDS; CONFIDENTIALITY	42
17.1	Review and Access to Vendor's Records	42
17.2	Access to Facilities, Records, Systems	43
17.3	Subcontractors.....	43
17.4	Excluded Materials	43
17.5	Audit Requirements	43
17.6	Public Records	43
17.7	Access and Protection	44
17.8	Survival	46
XVIII.	GENERAL.....	46
18.1	Recitals.....	46
18.2	Exhibits and Attachments	46
18.3	Survivorship.....	46
18.4	Assignments.....	46
18.5	Publicity	46
18.6	Independent Status of Vendor.....	46
18.7	Entire Contract.....	47
18.8	Modifications and Amendments	47
18.9	Waiver.....	47
18.10	Severability	47
18.11	Governing Law	47
18.12	Order of Precedence.....	47
18.13	Uniform Commercial Code (UCC) Applicability.....	48

18.14	Antitrust Violations.....	48
18.15	Attorneys’ Fees and Costs	48
18.16	Contract Execution.....	48
18.17	Counterparts.....	48
18.18	Debarment and Suspension.....	48
18.19	Force Majeure	48

Exhibit A Program Management Plan

Exhibit B Pricing and Delivery Tables [Vendor’s Proposal]

Exhibit C Guaranty

Exhibit D Exceptions to Scope of Work [optional]

Exhibit E Letter of Credit

Exhibit F Performance Measures and Liquidated Damages Tables

Exhibit G Licenses

Exhibit H Escrow Agreement [optional]

CONTRACT

This Statewide Tolling Customer Service Center (CSC) Contract (CONTRACT NUMBER KXXX) (Contract) is made and entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington (WSDOT or the Department), and VENDOR NAME, a corporation, licensed to do business in the State of Washington (Vendor).

ARTICLE I. RECITALS

1.1 WSDOT is establishing a new Statewide Tolling Customer Service Center to support its tolling program.

1.2 The tolling program will include the implementation of an electronic tolling system on the SR 520 bridge, which crosses Lake Washington and connects the City of Seattle, I-5 and I-405 with the region's high tech center located east of Lake Washington.

1.3 In order to implement tolling on SR 520, WSDOT, as required by RCW 47.56.785, requested and received approval from the Legislature. The Legislature's approval was granted pursuant to ESHB 2211 Chapter 472, Laws of 2009.

1.4 The statewide tolling CSC will provide customer service operations to the SR 520 toll facility, the existing Tacoma Narrows Bridge toll facility and the SR 167 High Occupancy Toll (HOT) Lanes toll facility as well as to the other state toll facilities that are authorized by the Legislature and implemented during the life of this Contract.

1.5 WSDOT anticipates that the tolling on SR 520 will commence operations by October 2010.

1.6 WSDOT issued a Request for Proposal (RFP) dated June 15, 2009, for the purpose of soliciting bids from potential vendors for the design, development, implementation, operation, and maintenance of the CSC.

1.7 Vendor submitted a timely response to WSDOT's RFP. WSDOT evaluated all properly submitted responses to the RFP and selected the response of Vendor (the Response) for further negotiation of this Contract with Vendor.

1.8 WSDOT and Vendor have negotiated this Contract pursuant to WSDOT's express reservations of all rights available to it by law in administering the RFP, including but not limited to the right to negotiate with a proposer without being bound by any provisions in its proposal. WSDOT finds that the terms and conditions as negotiated pursuant to such reservation of rights, and as set forth in this Contract, are within the scope of the RFP and remain more advantageous to WSDOT than those in any other proposal received in response to the RFP. In addition, WSDOT has determined that entering into this Contract with Vendor will meet WSDOT's needs and will be in WSDOT's best interest.

1.9 WSDOT has authority to enter into this Contract under Ch. 43.105 RCW, Ch 39.29 RCW and Ch. 47.56 RCW.

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, WSDOT and Vendor agree as follows:

ARTICLE II. DEFINITIONS; ACRONYMS

All capitalized terms and abbreviations used in this Contract, but not expressly defined herein, have the respective meanings set forth in **Appendix 1 -- Definitions** attached to WSDOT's ACQ-2009-0515-RFP, hereinafter the "**RFP**".

ARTICLE III. TERM

3.1 Initial Term. This Contract shall commence upon the Effective Date and terminate at 11:59 p.m. on June 30, 2014, unless terminated earlier as provided elsewhere herein.

3.2 Extension(s). At its sole discretion, WSDOT may extend this Contract for two (2) additional two-year terms. WSDOT may exercise the option for such extension(s) by delivering to Vendor notice of its intent to extend at least 60 days prior to the expiration of the original term or previous extension.

ARTICLE IV. SCOPE OF WORK

4.1 Program Requirements.

4.1.1 Vendor Obligations. Vendor shall furnish all Services, Staff, Products, connections, Software, labor, personnel, transportation, materials, storage, tools, supplies, permits, licenses, Equipment, and other materials necessary to supply a fully functional CSC (including the System) for the State in accordance with Vendor's Response, the **Scope of Work** (SOW), which is attached to the RFP as Appendix 2 and which includes detailed requirements for Program Management, scheduling, design, testing, Data migration, operations, Maintenance and accounting, as well Business Rules attached to the RFP as Appendix 3. Vendor shall provide Services and Staff, and otherwise do all things necessary for or incidental to the performance of the Work and provision of the CSC.

4.2 Program Management Plan.

4.2.1 The Vendor shall prepare a Project Management Plan (PMP) with assistance and input from WSDOT as described in Section 4 of the **Scope of Work** including but not limited to the Vendor's organization, the Program Schedule and the pricing schedule. The elements of the PMP shall be consistent with the Vendor's Response, including the overall Program Schedule contained therein, and **Exhibit B -- Pricing and Delivery Tables**.

4.2.2 The Vendor shall submit a proposed PMP to the WSDOT Program Manager for review and Acceptance within 30 days after the Effective Date of the Contract. In the event of failure of the parties to agree upon this PMP and/or WSDOT to give its Acceptance thereof within 45 days of the Effective Date, WSDOT may invoke its right to terminate this Contract without liability for such termination, and, in WSDOT's discretion, pursue negotiations with an alternative vendor.

4.2.3 Upon Acceptance by WSDOT, the PMP by this reference constitutes part of this Contract as **Exhibit A – Program Management Plan**.

4.2.4 Either party may propose changes to the PMP. Changes shall be in writing, accepted and signed by WSDOT before they become effective.

4.3 Vendor Organization. The Approved Program Management Plan shall provide and maintain an accurate Vendor Organizational Chart as well as a Directory of Key Program Staff as described in the **Scope of Work -- Section 4.2** and consistent with Vendor Response.

4.4 Program Schedule.

4.4.1 The PMP shall include a Program Schedule which will list each Deliverable, major Task and Milestone together with completion/submittal dates for each Task or Deliverable and Acceptance dates where appropriate.

4.4.2 The Program Schedule shall be consistent with **Exhibit B -- Pricing and Delivery Tables** and the overall Program Schedule submitted as part of Vendor's Proposal, but it should include significant additional detail on the Tasks and Deliverables which will logically lead to completion of each milestone by the required overall completion dates as described in the **Scope of Work**.

4.5 Changes to Approved Program Schedule

4.5.1 Vendor shall prepare regular weekly Program status reports that are described in **Appendix 2—SOW Section 4.2** and that reflect the status of the Tasks and Deliverables as listed in the Program Schedule. Vendor may propose and WSDOT has discretion to allow changes to the Program Schedule as further described below. After such changes to the Program Schedule are agreed upon by WSDOT in writing, **Exhibit A – Program Management Plan** shall automatically be deemed to be updated.

4.5.2 WSDOT may approve Time Extensions at its sole discretion, as necessary, to modify the Program Schedule for reasons out of the control of the Vendor. However, as time is of the essence in the Vendor's performance, WSDOT will issue Time Extensions sparingly, if at all, to Vendor.

4.5.3 Vendor shall submit any requests for Time Extensions to the WSDOT Program Manager in writing within five (5) Business Days of the event or change that necessitated the request for a Time Extension. The requests for Time Extension by Vendor shall be limited to the affect on the Program Schedule attributable to the change or event giving rise to the request.

4.5.4 To be considered by the WSDOT Program Manager, the request shall be in sufficient detail (as determined by the WSDOT Program Manager) to enable the WSDOT Program Manager to ascertain the basis and amount of the time requested. The request shall include an updated schedule that supports the request and demonstrates that the change or event: (1) had a specific impact on the Critical Path, and, except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by re-sequencing of the Work or by using other reasonable alternatives.

4.5.5 The WSDOT Program Manager will evaluate and respond within five (5) Business Days of receiving the request. If dissatisfied with the WSDOT Program Manager's determination, Vendor may follow the Dispute Resolution Procedure as set out in Section XV below.

4.5.6 Unless specifically agreed to in writing, WSDOT's agreement to a change to the PMP or Program Schedule shall not relieve Vendor of liability for Liquidated Damages and other damages arising from failure to perform its obligations.

4.5.7 The Program Schedule will not change to accommodate Vendor's correction of Deficiencies in Tasks or Deliverables, unless otherwise agreed beforehand, in writing by WSDOT. WSDOT has the discretion to extend the Program Schedule from day-to-day to accommodate the Acceptance process.

4.5.8 Changes in the Program Schedule arising out of Change Orders shall be submitted and adopted according to the terms contained in Section VI herein.

4.6 Supplemental Work Plan -- Additional Toll Facility. If WSDOT receives Legislative direction to open any additional Toll Facility, WSDOT may request that the Vendor submit a Supplemental Program Management Plan, which will include the Tasks and Deliverables, if any, associated with opening an additional Toll Facility. Vendor will have 30 business days from the date of request to submit the Supplemental Work Plan to WSDOT for Acceptance.

4.7 Deliverables and Services.

4.7.1 General

(a) Vendor shall provide WSDOT with the Deliverables and Services as described in the **Scope of Work**, the RFP, the Response, other parts of this Contract, Change Orders and as otherwise agreed in writing by the Parties. Deliverables and Services will be included in the Program Schedule and will be completed according to the times contained therein unless otherwise agreed by the Parties, in writing.

(b) All Deliverables and Services are subject to WSDOT's Acceptance including without exception Deliverables and Services provided pursuant to Change Orders. WSDOT's review and Acceptance, including but not limited to Acceptance of Deliverables and Services, will be in accordance with the timeframes set forth in Program Schedule.

4.7.2 Acceptance Process

(a) Upon receipt of a Deliverable or Service and receipt of Confirmation from Vendor that the Deliverable or Service meets its Requirements, WSDOT shall review Deliverable or Service and will notify Vendor as to whether any Deficiencies are found. Vendor shall have time to correct any Deficiencies in accordance with the Program Schedule or shall have 30 days from notification by WSDOT of any Deficiencies if no such date is specified in the Program Schedule.

(b) If Vendor is unable to correct all Deficiencies within the number of days indicated in the Program Schedule following the Deliverable's or Service's scheduled Acceptance, or if no such date is in the Program Schedule, within 30 days from notification by WSDOT of any Deficiencies, WSDOT has the discretion to (1) continue with corrections by Vendor, (2) request a replacement Deliverable or Service at Vendor's expense, (3) set-off from the Price to the extent WSDOT determines the Deficiencies have not been corrected and provide Acceptance for the applicable Deliverable or Service; or (4) provide notice of default to Vendor and terminate the Contract as set forth in Section 14.2.

(c) Once a Deliverable has received Acceptance from WSDOT, the obligations described in the Deliverable shall be enforceable and subject to WSDOT's rights and remedies contained herein for Vendor's failure to perform. Copies of Deliverables which have received Acceptance will be maintained by the WSDOT Program Manager.

4.7.3 Enforcement and Protection.

(a) Vendor shall continuously protect all Deliverables and backups for such Deliverables from damage, destruction or loss caused by Vendor. During the period Deliverables are in transit and in possession of Vendor, its carriers or WSDOT prior to their Acceptance, Vendor and its insurers, if any, shall bear the risk of loss or damage to such Deliverables, unless such loss or damage is caused by the negligence or intentional misconduct of WSDOT. Except as otherwise specifically provided herein, after WSDOT provides Acceptance for a Deliverable, the risk of loss or damage will be borne by WSDOT, except loss or damage attributable to the Staff.

(b) In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and a Deliverable that has already received Acceptance, the RFP or the Response, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in favor of the latest WSDOT-approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly in a subsequent Deliverable. No Requirements can be omitted without the written consent of the WSDOT Program Manager.

(c) WSDOT may assess Liquidated Damages as described in Section 14.8 herein and pursue its other remedies for Vendor's failure to receive Acceptance for a Deliverable or Services according to the PMP as well as for Vendor's failure to perform any of the terms or obligations contained in a Deliverable that has received Acceptance.

ARTICLE V. PRICING; INVOICE; PAYMENT

5.1 Prices. Except as otherwise provided herein, Vendor agrees to provide the Services and Deliverables under this Contract at the Prices and according to the schedule listed in **Exhibit B -- Pricing and Delivery Tables**.

5.1.2 No advance payment shall be made for the Products or Services furnished by Vendor pursuant to this Contract with the exception of warranty and Maintenance Services, which payments will be made in accordance with the **Scope of Work**.

5.1.3 Vendor agrees to perform Change Orders at the billing rates set forth in the **Pricing and Delivery Tables -- Exhibit B-4**. If WSDOT issues a Change Order subsequent to FY 2011 that includes any of the price elements listed in **Pricing and Delivery Tables -- Exhibit B-4**, the respective listed price(s) shall be adjusted by WSDOT based on the CPI-W Index for the Seattle-Tacoma-Bremerton, WA area. The adjustment shall be determined by comparing the July CPI-W index for the fiscal year in which the Change Order is executed with the July 2010 CPI-W index. Any adjustment increase shall be capped at 10.0% annually.

5.1.4 If WSDOT elects to exercise any optional Contract Extension, the Vendor may annually request (in writing) that the Monthly Operations prices listed in the **Pricing and Delivery Tables, Exhibit B-3** (fixed and variable price elements) be adjusted annually by WSDOT (starting on 7/1/2014) based on the CPI-W Index for the Seattle-Tacoma-Bremerton, WA area. The adjustment shall be determined by comparing the July CPI-W index for the most current year with the July CPI-W index of the previous year. Any annual adjustment increase shall be capped at 5.0%.

5.2 Invoices.

5.2.1 Vendor shall have the right to issue invoices for Milestones and/or Monthly Operations in the amounts listed in the **Pricing and Delivery Tables -- Exhibit B**. Vendor shall submit correct invoices in accordance with WSDOT's invoicing requirements to the WSDOT Program Manager containing certification by Vendor that the Services were performed or Deliverables produced as specified under the Contract and the dates of performance or Acceptance.

5.2.2 Payments made by WSDOT to Vendor are full compensation for all costs, Products, and Services. No additional compensation will be available, except by executed amendment(s) to this Contract.

5.2.3 Vendor shall submit properly itemized invoices to WSDOT's Program Manager in hard copy duplicate and email an electronic copy of each invoice (.pdf). Invoices shall provide and itemize, as applicable, the following items:

- (a) WSDOT Contract number K_____;
- (b) Vendor name, address, phone number, and Federal Tax Identification Number;

- (c) Description of Deliverables and/or Services, including quantities or transaction volumes where applicable;
- (d) Date(s) of delivery, acceptance and/or completion as appropriate;
- (e) Net invoice Price for each item;
- (f) Applicable taxes;
- (g) Other applicable charges;
- (h) Total invoice Price; and
- (i) Payment terms.

5.2.4 WSDOT may withhold from Vendor's payment any amounts which are in dispute or which Vendor owes WSDOT under this Contract, subject to WSDOT's exercise of its other rights and remedies;

5.2.5 Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.

5.2.6 Contract number K_____ must appear on all bills of lading, packages, and correspondence relating to this Contract.

5.2.7 WSDOT shall not honor drafts, nor accept goods on a sight draft basis.

5.2.8 If WSDOT fails to make timely payment, Vendor may invoice WSDOT one percent per month on the amount overdue or a minimum of one dollar (\$1.00). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within 30 calendar days of WSDOT's receipt of a correct invoice which has been issued after Acceptance of the applicable Product or Service.

5.2.9 In the event an overpayment is made to Vendor under this Contract, Vendor shall immediately refund to WSDOT the full amount of any such erroneous payment or overpayment following Vendor's written notice of such erroneous payment or overpayment, as issued by WSDOT. If Vendor fails to refund the erroneous payment or overpayment within a 30-day period, WSDOT may charge late payment fees at one percent per month on the amount not repaid. The provisions in this Section shall survive the expiration or termination of this Contract.

5.3 Reductions in Amounts Due. Amounts due WSDOT by Vendor, including but not limited to Liquidated Damages or other damages, or claims for damages, may be deducted or set-off by WSDOT from any money payable to Vendor pursuant to this Contract.

5.4 Price Adjustments. Except as otherwise provided in Section VI, herein, adjustment to the price must be in writing as a specific pricing amendment and signed by both parties prior to commencement of the pertinent performance.

5.5 Price Warranty. Vendor warrants that all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the prices, terms, warranties, and benefits presently being offered by Vendor to any governmental entity purchasing substantially similar Products and Services and quantity under similar terms. If, during the term of this Contract, Vendor shall enter into contracts with any governmental entity providing greater benefits or more favorable terms, prices and warranties than those provided by this Contract, or reduces prices for any of the Products or Services during the term, Vendor shall be obligated to provide the same to WSDOT for subsequent purchases made under this Contract.

5.6 No Advance Payments. No advance payment shall be made for the Products or Services furnished by Vendor pursuant to this Contract.

5.7 Taxes. WSDOT will pay sales and use taxes, if any, during the life of this Contract as required by Washington State law. WSDOT will be responsible for remitting to the State of Washington destination based sales tax on retail items sold by Vendor to Customers under this Contract.

Vendor shall calculate and collect destination based sales tax on any retail items sold, and shall remit and report such taxes on a monthly basis to WSDOT.

Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. WSDOT, as an agency of State government, is exempt from property tax. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments under this Contract.

5.8 Withholding Payment. Timely and consistent performance is of the essence in this Contract. If Vendor fails to perform any Work or obligation outlined in the Contract, the Program Schedule or a Change Order, for any reason, including but not limited to a protest or dispute, WSDOT may withhold any payments due under the Contract. Where the Work is to be performed monthly, the payment may be withheld until the task is properly performed and no back payment for unperformed tasks will be due.

5.9 Holdback. WSDOT shall retain a holdback of 10% of the Price for each Milestone or Monthly Operations payment during Phase 1 and Phase 2. Vendor shall have the right to issue an invoice following Acceptance of all Deliverables and Services in Phase 1, and WSDOT will pay Vendor the holdback for Phase 1 within 30 days following receipt by WSDOT of an invoice, which is issued in accordance with the terms of this Contract following WSDOT's Acceptance of Phase 1. Vendor shall have the right to issue an invoice following Acceptance of all Deliverables and Services in Phase 2, and WSDOT will pay Vendor the holdback for Phase 2 within 30 days following receipt by WSDOT of an invoice, which is issued in accordance with the terms of this Contract following WSDOT's Acceptance of Phase 2.

ARTICLE VI. PROGRAM CHANGES

6.1 General.

6.1.1 The Parties acknowledge that the statewide tolling Program and/or the services provided by the CSC may be subject to change during the term of this Contract. WSDOT reserves the right to issue or approve Final Change Orders that make changes in quantities and alterations in work to satisfactorily perform the statewide tolling program and operate the CSC. Such changes in quantities and alterations of Work shall not invalidate this Contract, and Vendor agrees to provide the changes in quantities and perform the Work as altered in accordance with the Final Change Orders. At any time during the term of this Contract, either Vendor or WSDOT may propose a Change Order as described below.

6.1.2 Where applicable, Vendor and WSDOT may jointly develop a **Scope of Work**, associated level of hourly staff effort, and any direct expenses Change Orders will be issued at the discretion of WSDOT. Alternatively, such additional Work may be subject to a new competitive procurement as deemed to be in the best interest of WSDOT, or as required by law.

6.1.3 Change Orders involving changes in price or material changes to the **Scope of Work** or Program Schedule must be approved and signed by the WSDOT Contracting Officer.

6.2 Change Order Process. Either Party may present a written proposed Change Order to the other Party using the following process:

6.2.1 WSDOT Initiated Change. Where WSDOT initiates the Change Order, Vendor shall provide a written Vendor Change Order response within seven Business Days of receipt of the WSDOT initiated Change Order. The Vendor's Change Order response shall contain proposed Change Order terms including, where necessary or appropriate, a description of change in performance of Services, schedule of change performance, Price for change performance and changes to the Program Schedule and/or Program Pricing.

6.2.2 Vendor Initiated Change.

(a) Where the Vendor initiates the Change Order, the Vendor shall provide WSDOT with a written Vendor initiated Change Order, which shall contain a description of the nature and reason for change together with proposed Change Order Terms as described in Section 6.2.1 herein.

(b) The WSDOT has a policy for the administration of cost reduction alternatives proposed by the Vendor. The Vendor may submit proposals for changing the Plans, Specifications, or other requirements of the Contract. These proposals must reduce the cost or time required for construction of the project. When determined appropriate by the WSDOT, the Vendor will be allowed to share the savings.

(c) Guidelines for submitting Cost Reduction Incentive Proposals are available at the Project Director's office. The actions and requirements described in the guidelines are not part of the Contract. The guidelines requirements and the WSDOT's decision to accept or reject the Vendor's proposal are not subject to arbitration under the arbitration clause or otherwise subject to litigation.

6.2.3 Final Change Order

(a) Upon receiving either the Vendor initiated Change Order or the Vendor's Change Order response as described in Sections 6.2.1 or 6.2.2, WSDOT may accept and sign documents as proposed by Vendor which will then become Final Change Order, or, alternatively, WSDOT and Vendor have an additional seven days to jointly develop and negotiate the terms of the Final Change Order.

(b) If after such seven days, the Parties have not agreed on terms for the Final Change Order, WSDOT will unilaterally issue a Final Change Order, including any necessary and appropriate Change Order terms such as Change Order **Scope of Work**, schedule of change performance, price for change performance and changes to the Program Schedule.

6.2.4 Performance of Final Change Order. Upon acceptance or issuance of the Final Change Order by WSDOT, Vendor shall perform the changes according to the terms of the Final Change Order. However, where the Final Change Order is unilaterally issued by WSDOT, Vendor may follow the Dispute Resolution Procedure in Article XV to dispute the Price for change in its performance or adjustments to the Maximum Amount or Program Schedule.

6.3 Tracking Change Orders. All Final Change Orders will be tracked by Vendor and Vendor shall provide WSDOT with a monthly status report on performance of Final Change Orders within ten days of the beginning of each month.

6.4 Change Order Pricing. Certain changes and modifications will be requested by WSDOT and performed by Vendor as a normal course of Program performance and will not involve additional charges to WSDOT. Other changes and modifications will be extraordinary and involve additional charges to be determined as part of the Change Order process.

6.4.1 Ordinary Changes -- No Additional Charge. Changes which are anticipated as a normal course of performance of this Program and will be performed by the Vendor at no additional charge to WSDOT include but are not limited to:

- (a) IT Services as defined in Section 36 of the **Scope of Work**;
- (b) Updates resulting from changes in the Business Rules;
- (c) Updates to work flow and transaction processing rules;
- (d) Improvements in operational efficiency;

(e) Updating Customer information in the languages and methods required in the **Scope of Work**;

(f) Modifications to the wording of statements, notices, and correspondence;

(g) Modification to Customer service representative scripts and training to reflect changes in operational procedures, program information, and Business Rules;

(h) Modification to IVR scripts to reflect changes in operational procedures, Program information, and Business Rules;

(i) Changes to security requirements to reflect changes in the WSDOT security policy, operational procedures, program information, PCI-DSS standards, and Business Rules;

(j) Changes to financial institution interface procedures and data exchange formats;

(k) Changes to WSDOT financial system interface information;

(l) Adjustments to standard reports;

(m) Modification of interfaces for the acquisition of registered vehicle owner names and addresses; and

(n) Updates to standard operating procedures to reflect operational modifications resulting from the above.

6.4.2 Extraordinary Changes -- Charges to be Determined. Change Orders which involve extraordinary changes will involve additional charges to WSDOT, including but are not limited to:

(a) Expansion of operations to include other Toll Transportation Facilities, such as the Columbia River Crossing, I-90 and/or I-405;

(b) Changes in Toll technology; or

(c) Significant changes in legal, regulatory, or policy requirements concerning Tolling operations.

6.5 Extraordinary Changes Prices. Prices for **extraordinary** changes shall be determined as set forth in Section 6.2 herein and shall be based on the staff level of effort using the Vendor's proposed hourly rates and any associated, documented direct expenses as provided in **Pricing and Delivery Table – Exhibit B-4**.

6.6 Change Order Based Time Extensions.

(a) If the Program Schedule is materially affected by a proposed Change Order, Vendor shall provide a written request for a change to the Program Schedule as part of the Vendor's initial response to Change Order.

(b) Vendor shall provide a written request for a change to the Program Schedule including an explanation of impacts on Deliverable, Task and Milestone Acceptance dates and how those dates will be upheld. The revised Program Schedule shall be subject to WSDOT's Acceptance. Any approval of Time Extension by WSDOT must be in writing.

6.7 Proceed with Work. The Vendor shall proceed with the Work upon receiving written Change Order approved by the WSDOT Program Manager.

6.8 Failure or Refusal to Perform Changes. If Vendor fails or refuses to perform its Services pursuant to a Change Order, Vendor shall be in material breach of this Contract, and WSDOT shall have rights to Liquidated Damages, to terminate the Contract or to pursue other remedies including but not limited to withholding payments as specified in Section 5.9 of this Contract.

6.9 Vendor Dispute of Change Order.

6.9.1 If Vendor disagrees with a Final Change Order unilaterally issued by WSDOT, Vendor has seven Business Days to initiate the Dispute Resolution Process outlined in Section XV below.

6.9.2 Vendor accepts all requirements of a Change Order by: (a) endorsing it, (b) writing a separate acceptance, or (c) failure to dispute the Final Change Order as provided in Section 6.10 in the way this Section provides.

6.9.3 A Change Order that is not protested as provided in this section shall constitute full acceptance of the terms of the Change Order including the Price and schedule for the Work contained in the Change Order. By not protesting as this section provides, Vendor also waives any additional entitlement and accepts from the WSDOT Program Manager any written or oral order (including directions, instructions, interpretations, and determinations).

6.10 Protest by Vendor. If in disagreement with anything required in a Change Order, another written order, or an oral order from the WSDOT Program Manager, including any direction, instruction, interpretation, or determination by the WSDOT Program Manager, Vendor may follow the protest procedure set out in Article XV herein.

ARTICLE VII. VENDOR'S RESPONSIBILITIES

7.1 Work. Vendor warrants that it shall be available to perform the Work within the time specified in the PMP, the Response, the **Scope of Work** and other parts of this Contract and that all Work will be performed on a priority basis for WSDOT. Vendor will begin Work promptly and will perform the Work in a continuous and diligent manner, and Vendor shall not interrupt the Work except as may be provided under this Contract.

7.2 Delivery.

7.2.1 Time is of the essence in Vendor's performance of the Work under this Contract. Vendor shall deliver the Products and Services ordered under the terms of this Contract within the PMP, Program Schedule and as otherwise set forth in this Contract, or within 30 days of receipt of a Change Order. For any exception to this delivery date, Vendor must notify WSDOT and obtain prior written approval. Time is of the essence with respect to delivery of Vendor's Products and Services, and Vendor may be subject to termination of this Contract, and/or other remedies available under law or equity for failure to deliver Products and Services on time.

7.2.2 All deliveries made pursuant to the Contract must be complete. Unless Vendor has obtained prior written approval from WSDOT, incomplete deliveries, backorders, or partial shipments will not be accepted. All shipments must be accompanied by a packing slip that identifies all items included with the shipment and the Contract. Vendor's delivery receipt must be signed by an authorized representative of WSDOT for all deliveries made hereunder.

7.3 Security. Vendor shall comply with requirements and perform all duties related to site, system and data security as described in Section 37 of **the Scope of Work** and as delineated in Vendor's Security Management Plan.

Vendor shall protect and securely maintain Customer Data as required by law, including but not limited to personal information provided by a Customer or related to the Customer's account activity or use of toll facilities. Vendor shall not use or disclose Customer Data except as necessary for toll collection and enforcement, or by express direction from WSDOT in response to a valid court order or subpoena..

While on WSDOT's property, including but not limited to the Right of Way and Facilities, Vendor shall conform in all respects with all WSDOT physical, fire, or other security regulations.

7.4 Coordination and Cooperation.

7.4.1 Cooperation Critical. Vendor cooperation is critical to the success of the Statewide Tolling Program and this Contract. Vendor shall cooperate with the Toll Collection Service vendors or contractors at all toll facilities as well as with WSDOT and other vendors, to ensure that the Work is properly performed in accordance with the Program Schedule. Vendor shall collaborate with any other vendors or contractors and coordinate its Work with the work of such other vendors or contractors, if any, which could affect the Work, and Vendor shall proceed in such manner as not to interfere or delay the progress of the work as a whole for WSDOT.

7.4.2 Deficiencies or Defects. If any part of the Vendor's Work depends, for proper execution or results, upon the work of any other vendor(s), Vendor shall inspect such Work and notify the WSDOT Program Manager immediately or no later than three Business Days from the date of inspection or discovery any defects in the work, products, data or other information of such other vendor that renders it unsuitable for such proper execution or results. Failure of the Vendor to do so shall constitute its acceptance of the other vendor's work as fit and

proper for the reception of Vendor's Work, except as to defects that may develop in the other vendor's work after the execution of the Vendor's Work.

7.4.3 Disputes or Disagreements. In cases of disagreement or disputes between Vendor and any other vendor or contractor that could delay or interfere with the Vendor's Work due to the failure to collaborate and cooperate, which cannot be resolved between Vendor and the others involved, Vendor shall notify the WSDOT Program Manager immediately, or no later than three Business Days from the date the disagreement or dispute arises. The notice must be in writing and must specify in reasonable detail the nature and cause of the disagreement or dispute.

7.4.4 Proceed with Work. Notwithstanding the existence of a defect, deficiency, dispute or disagreement as described above, Vendor shall diligently and without interruption, to the greatest extent possible, proceed with the Work at such rates of progress as will ensure full completion of the Work on time.

7.4.5 Dispute Resolution. The WSDOT Program Manager will review the details of any disagreement between Vendor and other vendors and make a determination resolving the dispute. Vendor may dispute the determination as delineated in Article XV herein. The Vendor will continue to perform the Work throughout any dispute process.

7.5 Licensing Standards. Vendor shall comply with all applicable local, State, and Federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract, including but not limited to the State licensing requirements and definitions set forth in chapter 19.02 RCW.

7.6 Compliance with Laws. Vendor shall comply with all applicable Laws and Regulations, including but not limited to:

7.6.1 State and Federal statutes and regulations related to toll collection and enforcement;

7.6.2 Federal statutes, regulations and guidance related to the Federal Highway Administration's Value Pricing Pilot Program;

7.6.3 Washington State information technology policies, procedures, and practices as provided on the Department of Information Services Web site: (<http://isb.wa.gov/policies.aspx>), and any amendments thereto; and

7.6.4 All applicable State and Federal Environmental Laws, including compliance with the following:

(a) Any facility that is or will be utilized in the performance of this Contract, unless such Contract is exempt under the Clean Air Act, as amended (42 U.S.C. § 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 C.F.R. 15) is not listed, on the date of contract award,

on the United States Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 C.F.R. 15.20.

(b) That the Vendor agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed there under.

(c) That the Vendor shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities.

(d) That the Vendor agrees to include or cause to be included the requirements of paragraph 1 through 4 of this section in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

7.6.5 All applicable nondiscrimination laws and regulations, including but not limited to: Title VI, Non-Discrimination, Title 49 C.F.R. Part 21 and Title VII of the Civil Rights Act; 42 U.S.C. § 12101 et seq.; Americans With Disabilities Act; and, Title 49.60 RCW, Washington Law Against Discrimination. During the performance of this Contract, the Vendor, for itself and its assignees and successors-in-interest (hereinafter referred to as the "Vendor") agrees as follows:

(a) The Vendor shall comply with all applicable nondiscrimination laws and regulations, including but not limited to Title VI of the Civil Rights Act of 1964, as amended; Americans With Disabilities Act; and 49 C.F.R., Part 21;

(b) The Vendor shall state, in all solicitations or advertisements for employees, that all qualified applicants will be considered for employment, without regard to race, color, national origin, sex, age, or disability;

(c) The Vendor shall insert the following notification in all solicitations for bids for work or material and all proposals for negotiated agreements:

The Vendor in accordance to Title VI of the Civil Rights Act of 1964, 78 Stat.252, 42 U.S. Code 2000d to 2000d-4, and Title 49 Code of Federal Regulations, Part 21, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color national origin and sex in consideration for an award."

(d) The Vendor shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Vendor shall not participate either directly or indirectly in discrimination prohibited by law;

(e) The Vendor shall send to each labor union, employment agency, or representative of workers with which the Vendor has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency or worker's representative, of the Vendor's commitments under this Contract with regard to nondiscrimination;

(f) The Vendor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by WSDOT or the Federal Highway Administration to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Vendor is in the exclusive possession of another who fails or refuses to furnish this information, the Vendor shall so certify to WSDOT or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information;

(g) The Vendor shall ensure that the following assurance is inserted in all contracts/subcontracts:

The contractor/subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor/subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor/subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as deemed appropriate.

7.7 Non-Compliance. In the event of Vendor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, in addition to WSDOT's other remedies, Vendor may be declared ineligible for further contracts with WSDOT.

7.8 WSDOT Access and Inspection .

At all times under this Contract, WSDOT shall have free and unrestricted access to the Vendor's facilities and to all portions of the Customer Service Center facilities for monitoring, inspection, testing, observation and other purposes, and Vendor shall cooperate with WSDOT with respect thereto. WSDOT shall perform its inspections and reviews in compliance with Vendor's safety and security procedures, and shall endeavor to conduct any such inspection in a manner causing minimum interference with Vendor's activities. No inspection, review or failure to inspect shall relieve Vendor from duties or obligations hereunder.

ARTICLE VIII. SUBCONTRACTING

8.1 Vendor may, with prior written permission from the WSDOT Program Director, which permission shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. However, Vendor must use State approved Subcontractors where required by State law or regulations as further described in Appendix 2.

8.2 Subject to the other provisions herein, WSDOT expressly consents to the Vendor's use of the Subcontractors designated in its Response for the provision of the Services specified in the Response. Any such approval may be rescinded in WSDOT's sole discretion.

8.3 Training. Vendor is solely responsible and liable for the proper performance and quality of any Work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to WSDOT for any breach in the performance of Vendor's duties or obligations. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to WSDOT, including but not limited to personal injury, physical loss, harassment of WSDOT employees, or violations of applicable Sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors or their agents or employees.

8.4 Technological Support Services. In addition, Vendor's use of any Subcontractor shall not cause the loss of any warranty from Vendor.

8.5 Vendor is solely responsible and liable for ensuring that the terms and conditions set forth in this Contract are incorporated into any supplier or subcontracting relationships with other entities for Work related to this Contract. Liability includes management responsibility and quality assurance for Work performed and financial responsibility for payments to and by partner organizations or subcontractor to others.

8.6 For Work to be performed for WSDOT, WSDOT reserves the right to reject any of the Vendor's employees, suppliers, or Subcontractors with due cause. Any and all costs or expenses associated with replacement of any person or entity shall be borne by Vendor.

8.7 WSDOT may, in the exercise of its discretion and judgment, identify certain of Vendor's employees as key personnel, and if so, the Vendor shall take all necessary steps to assure that said Vendor's employees are available and assigned to the Work as long as said employees are employed by Vendor. Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, such key personnel shall not be changed during the Program from the people who were described in the Response and during operations and Maintenance without the prior written approval of WSDOT. During the term of the Contract, WSDOT reserves the right to approve or disapprove Vendor's and any Subcontractor's Staff assigned to this Contract, to approve or disapprove any proposed changes in Staff, or to require the removal or reassignment of any Staff found unacceptable by WSDOT.

8.8 Any contracts made by the Vendor with a Subcontractor shall include the following affirmative statement: That WSDOT is an intended third party beneficiary of the contract; that the Subcontractor has no agreement with WSDOT; and that WSDOT shall be indemnified by the Vendor for any claim presented by the Subcontractor. At WSDOT's request, Contractor shall forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing Subcontractor and, when appropriate, substitute another Subcontractor.

8.9 Upon expiration or termination of the Contract for any reason, WSDOT will have the right to enter into direct contracts with any of the Subcontractors. Vendor agrees that its

arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering in into direct contracts with WSDOT.

ARTICLE IX. TREATMENT OF ASSETS

9.1 Title to all property furnished by WSDOT under this Contract shall remain with WSDOT.

9.2 Any WSDOT property furnished to Vendor shall, unless otherwise provided herein or approved in writing by WSDOT, be used only for the performance of this Contract.

9.3 Vendor shall be responsible for any loss of or damage to property of WSDOT that results from Vendor's acts or activities, or that results from Vendor's failure to maintain and administer that property in accordance with sound management and security practices and WSDOT administrative processes.

9.4 Upon loss or destruction of, or damage to any WSDOT property, Vendor shall notify WSDOT and shall take all reasonable steps to protect that property from further damage.

9.5 Vendor shall surrender to WSDOT all WSDOT property prior to settlement upon completion, termination, or cancellation of this Contract.

9.6 WSDOT will have all ownership rights in its Confidential Information including Customer Data, its Proprietary Information, its Intellectual Property, and its Hardware, if any.

9.7 The provisions in this Article IX shall survive the expiration or termination of this Contract.

9.8 Transponders. Vendor assumes responsibility for loss or damage to transponders upon receipt and shall maintain, protect and manage transponder inventory pursuant to the **Scope of Work** and the Vendor's Transponder Distribution Plan.

ARTICLE X. CONTRACT MANAGEMENT AND ADMINISTRATION

10.1 Notices.

10.1.1 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested to the parties at the addresses as follows:

To Vendor at:

To WSDOT at:

**State of Washington
Department of Transportation
Admin. Services Contracts Office**

Phone:
Fax:
E-mail:

Attn: Cheryl Mills
P.O. Box 47408
Olympia, Washington 98504-47408
Phone: 360-705-7549
Fax: 360-705-6848
E-mail: millsc@wsdot.wa.gov

10.1.2 The notice address and/or addressee as provided herein may be changed by written notice given as provided above.

10.1.3 Vendor agrees to accept service of process at the address provided herein; provided that, such address is located in the State of Washington. Otherwise, Vendor designates the Secretary of State of Washington as an agent for the purpose of service of process. Such service shall be deemed personal service.

10.1.4 For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

10.1.5 Notices shall be effective upon receipt or four Business Days after mailing, whichever is earlier.

10.1.6 In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products or Services provided pursuant to this Contract is served upon Vendor, Vendor shall immediately forward such subpoena or service of process to WSDOT Program Manager. No data or information shall be released to law enforcement or third parties pursuant to legal process without express authority from WSDOT.

10.1.7 The provisions in this Section shall survive the expiration or termination of this Contract.

10.2 Vendor Staff.

10.2.1 Vendor shall fully staff the Program and make available for Work the following Key Program Staff:

Staff Name	Role
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Vendor Executive Director	Executive level Director who shall have direct and immediate access to the highest levels of management for Vendor to resolve problems on the Project.
Vendor Program Manager	Responsible for the on-site management of the statewide Customer Service Center delivery and ongoing operations.
IT Manager	Responsible for implementing and maintaining the IT infrastructure and applications for the CSC System.
Financial and Accounting Manager	Responsible for the delivery of professional financial and accounting services required for the Project.
Customer Service Manager	Responsible for managing customer service operations and ensuring an overall positive experience for toll customers.
QA/QC Manager	Responsible for ensuring the overall quality of the delivered system and services, including all documentation and deliverables.

10.2.2 Vendor Key Program Staff. In addition to the Vendor Program Manager, the other key program staff of Vendor will be listed and maintained in the Vendor Staff Directory and Vendor Organizational Chart of Program Management Plan as described in Section 4, and consistent with the Vendor's Response and the **Scope of Work**. Vendor agrees to submit to WSDOT the professional qualifications of any proposed key Program staff substitution prior to the staff's assignment to the Program. All substitutes must have equal or better qualifications than the staff being replaced.

10.2.3 Vendor Executive Director. Vendor shall appoint an executive level sponsor who shall have direct and immediate access to the highest levels of management for Vendor to resolve problems on the Program.

10.2.4 Vendor Program Manager. A duly authorized Vendor Program Manager shall represent Vendor at all times, beginning as of the Effective Date and shall be responsible for managing and directing the Services of Vendor under this Contract. Not later than the CSC Operations Commencement Date, the Vendor Program Manager shall be dedicated full time to the Program and the Services. The Vendor Program Manager, and each successor Vendor Program Manager, shall be named by Vendor, by its notice to WSDOT, but shall be subject, after an interview of such person by WSDOT, to approval by WSDOT. Unless WSDOT identifies its reasons for not approving any person nominated to be Vendor Program Manager in a notice to Vendor delivered with ten days following such interview, the person shall be deemed approved by WSDOT. Upon approval or deemed approval of the Vendor Program Manager by WSDOT, Vendor shall not transfer such person to another position without the approval of WSDOT. Where practicable, Vendor shall consult with WSDOT prior to arranging for any such transfer. The Vendor Program Manager shall have full authority to act on behalf of Vendor for all purposes in connection with this Contract and his or her instructions, requests, approvals, and decisions shall be binding upon Vendor as to all matters pertaining to this Contract and to the performance of Vendor hereunder. Vendor represents and warrants that it implements

reasonable procedures for annual employment performance reviews, including such reviews of the Vendor Program Manager. Vendor shall solicit WSDOT's input on the Vendor Program Manager's performance at least once annually.

10.2.5 Vendor Personnel. Vendor shall provide and make available as necessary or appropriate all professional, supervisory, managerial, technical, operating, administrative and other personnel required to perform the Services. These personnel shall be competent, qualified, and capable of performing the duties to which they are assigned and shall meet all other requirements of the Contract. Vendor shall ensure that all its employees and Subcontractor employees are properly trained, certified, or licensed as appropriate and are properly qualified by education and experience to perform the Work. Vendor shall meet the Requirements for staffing as described herein. The working hours, rates of compensation, and all other labor matters relating to the employment of individuals used by Vendor in the performance of Services shall be determined solely by Vendor, but in a manner consistent with industry standards and rates, and with applicable Laws and Regulations.

10.2.6 Labor Relations. Vendor shall use all reasonable efforts in the employment of labor and Subcontractors (whether directly or indirectly employed) so as not to cause any conflict or interference with or between the various trades, or any delay or interruption in the performance of Vendor's Services or the operation of the CSC or Toll Facilities. Vendor shall be solely responsible for all labor relations matters relating to the Services and shall at all times use and cause its Subcontractors to use reasonable efforts to maintain harmony among unions (if any) and other personnel employed in connection therewith. Vendor at all times shall use and shall cause its Subcontractors to use reasonable efforts and judgment as an experienced operator or Vendor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, and strikes. Notwithstanding the foregoing, Vendor acknowledges and agrees that it does not have the authority to, and shall not, without WSDOT's express written consent in its sole discretion, enter into any contracts or collective bargaining agreements with respect to labor matters concerning the Transportation Facilities which govern WSDOT personnel at the Site or at other Toll Facilities or which purport to bind or otherwise obligate WSDOT.

10.2.7 Removal of Employees. Promptly upon written request of WSDOT, Vendor shall remove from activities associated with the Services any Staff member who WSDOT considers unsuitable for such work. WSDOT may consider an employee unsuitable for work based on such factors as, but not limited to, prior criminal record, unsatisfactory performance in similar jobs, security risk, poor demeanor or improper conduct in dealing with the public, customers, or other employees, and insufficiency of skills or experience needed for the position. Such Staff shall not be reassigned to perform any other Work associated with Services, except with the written consent of WSDOT in its sole discretion. No additional compensation in any form shall be payable to Vendor by WSDOT hereunder for exercise of such right of removal.

10.3 WSDOT Staff. In addition to the personnel identified in the Contract, WSDOT shall provide to Vendor reasonable access to appropriate WSDOT personnel, Vendors, and consultants for purposes of fulfilling WSDOT's obligations.

10.4 WSDOT Program Manager. WSDOT shall appoint a WSDOT Program Manager for this Contract and will provide oversight of the activities conducted hereunder. The WSDOT Program Manager will be the principal contact for Vendor concerning business activities and Vendor's performance under this Contract; provided that, the WSDOT Program Manager does not have authority to accept legal notices on behalf of WSDOT or amend this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Program Manager assigned to this Contract. The WSDOT Program Manager information is:

Patty Rubstello, Tolling and System Development Engineer
401 Second Avenue South, Suite 300
Seattle, Washington 98104-2862
Phone : (206) 464-1299
Fax : (206) 464-1189
E-mail : rubstep@wsdot.wa.gov

10.5 WSDOT Contract Administrator. WSDOT shall appoint a WSDOT Contract Administrator for this Contract who is designated as the WSDOT employee to receive legal notices, and to administer, amend, or terminate this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Contract Administrator assigned to this Contract. The WSDOT Contract Administrator information is:

Cheryl Mills, Senior Contracts Administrator
P.O. Box 47408
Olympia, Washington 98504-7408
Phone : (360) 705-7548
Fax : (360) 705-6842
E-mail : millsc@wsdot.wa.gov

10.6 WSDOT Toll Program Executive Director. This Contract gives the Director authority over the Work. Whenever it is so provided in this Contract, the decision of the Director shall be final; provided, however, that if an action is brought within the time allowed in this Contract challenging the Director's decision, that decision shall be subject to the scope of judicial review provided in such cases under Washington case law. The Director's decisions will be final on all questions including, but not limited to the following:

10.6.1 Quality and acceptability of deliverables and services;

10.6.2 Measurement of unit price Work;

10.6.3 Acceptability of rates of progress on the Work;

10.6.4 Interpretation of Program Requirements;

10.6.5 Determination as to the existence of changed or differing Program conditions;

10.6.6 Fulfillment of Contract terms by the Vendor;

10.6.7 Payments under the Contract including Equitable Adjustments;

10.6.8 Suspension(s) of Work; and

10.6.9 Termination of the Contract for default, convenience or other basis.

ARTICLE XI. INTELLECTUAL PROPERTY

11.1 Ownership. WSDOT agrees that Vendor shall retain ownership to all Government Funded Developments, Deliverables, and other Products, subject to the limitations described in this Article XI.

11.1.1 License. Vendor shall provide nonexclusive, perpetual and irrevocable Licenses to use Vendor Intellectual Property including Software and Software enhancements produced and/or used by Vendor to perform the Services required herein and for the purposes provided in this Contract and **Scope of Work** including fulfillment of the Vendor's obligations in the Business Continuity Plans substantially in the Form of **Exhibit G -- Licenses**.

11.1.2 Escrow Agreement. [Optional] WSDOT and Vendor acknowledge that certain technical data, including source code and Software System Documentation, constituting information which, if subject to public disclosure, would deprive Vendor of commercial value, but to which WSDOT must be ensured access to fulfill the terms of the Business Continuity Plan. Accordingly, all Escrow Material shall be provided to the escrow repository pursuant to the terms of the Escrow Agreement substantially in the form of **Exhibit H -- Escrow Agreement**.

11.2 Intellectual Property Treatment. Intellectual Property shall be treated as follows:

11.2.1 Copyrights. The WSDOT and FHWA reserve a royalty-free, nonexclusive, perpetual and irrevocable License to reproduce, publish, modify, prepare derivative works based on, or otherwise use, and to authorize others to use for State and Federal Government purposes:

(a) Any Government Funded Developments, Deliverables and other Products developed under this Contract, or under a sub grant or contract under this Contract; and

(b) Any rights of copyright to which the WSDOT, its sub grantee or contractor purchases ownership, with Federal financial assistance provided by this Contract.

11.2.2 Patents. Rights to inventions made under this Contract shall be determined in accordance with 37 C.F.R. Section 401.14, which is hereby incorporated into this Contract by reference subject to the following modifications:

(a) The terms "to be performed by a small business firm or domestic non-profit organization" shall be deleted from paragraph (g)(1) of the clause;

(b) Paragraphs (g)(2) and (g)(3) of the clause shall be deleted; and

(c) Paragraph (1) of the clause, entitled "Communications" shall read as follows: "(1) communications. All notifications required by this clause shall be submitted to the FHWA Division office."

11.2.3 Data. Customer Data and other Data produced, compiled or used by the CSC and/or the Vendor shall be owned by WSDOT and may not be used except as authorized within this Contract, and Data may not be disclosed to third parties without express permission of WSDOT and as authorized by law.

11.3 Software Enhancements.

11.3.1 For the term of this Contract, Vendor shall own and supply any Software Enhancements, as the Software becomes available for the purpose of operating on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of Hardware.

11.3.2 For the term of the Contract, Vendor shall own and supply updated versions of any part of the Software Enhancements, as the Software becomes available that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software owned by Vendor in supplying Services under this Contract to WSDOT.

11.3.3 Vendor shall also provide necessary Licenses to Software enhancements and upgrades pursuant to this Section.

11.4 Intellectual Property Indemnification.

11.4.1 Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product supplied hereunder, or WSDOT's exercise of its rights to the Products within the terms of this Contract, infringes or misappropriates any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other Intellectual Property right of a third party worldwide. Vendor shall pay all costs incurred by WSDOT, including but not limited to costs resulting from such claims, of defense and settlement resulting from such claims, and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by WSDOT prior to or in such litigation, provided that WSDOT:

(a) Notifies Vendor in writing of the claim, but WSDOT's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor;

(b) Cooperates with Vendor in connection with the defense of the claim and all related settlement negotiations; provided, that such assistance shall not require WSDOT to expend funds; and

(c) WSDOT agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Vendor without Vendor's written consent.

11.4.2 If such claim has occurred, or in Vendor's opinion is likely to occur, WSDOT agrees to permit Vendor, at its option and expense, either to procure for WSDOT the right to continue using the Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If a court enjoins use of the Product and Vendor determines that none of these alternatives is feasible, Vendor, at its risk and expense, will take back the Product and provide WSDOT a refund. In the case of a Product, Vendor shall refund to WSDOT the entire amount WSDOT paid to Vendor for the Product, associated Services, other Products affected or impacted by the infringing Product, and Services associated with such affected or impacted Products, e.g., for installation of a Product.

11.4.3 Vendor has no liability for any claim of infringement arising solely from:

(a) Vendor's compliance with any designs, Requirements or instructions of WSDOT unless agreed to by Vendor;

(b) Modification of the Product by WSDOT or a third party without the prior knowledge and approval of Vendor; or

(c) Use of the Product in a way not specified by Vendor in its the Software System Documentation.

11.4.4 Vendor retains liability for any claim of infringement that arises against Vendor's Product independently of any of the actions specified in Section 11.4.1.

11.5 Survival. The provisions in this Article XI shall survive the expiration or termination of this Contract.

ARTICLE XII. REPRESENTATIONS AND WARRANTIES

12.1 Vendor Commitments, Warranties and Representations. Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment shall constitute a breach of this Contract (including but not limited to the Response) and shall render Vendor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in this Contract (including but not limited to the Response), or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in this Contract, or used to effect the sale to WSDOT.

12.2 Products.

12.2.1 Deliverables. Vendor represents and warrants that each Deliverable, including without limitation the System, shall meet its Requirements and function without Deficiency during the term.

12.2.2 Software. Vendor represents and warrants the following for the benefit of WSDOT for the term of this Contract:

- (a) The Software shall function during the term without Deficiency;
- (b) The Software and each Subsystem, module component and function thereof, shall be capable of operating fully and correctly on the System; and
- (c) Use of the Software with the System will not infringe or misappropriate any patent, copyright, trade secret, or other intellectual property or proprietary rights of others.

12.2.3 Hardware. Vendor represents and warrants the following for the benefit of WSDOT for the term of the Contract:

- (a) The Hardware is free from defects in materials and workmanship and that the Hardware shall function during the term to the applicable Requirements; and
- (b) The Hardware shall be capable of operating fully and correctly with and as part of the System.

12.2.4 Vendor represents and warrants that the System, in whole and in part, whether Hardware, firmware, Software and interfaces, which performs any date/time data stamp or recognition function, calculation or sequencing will provide accurate date/time data, including leap year and daylight savings time calculations.

12.2.5 Vendor shall promptly repair or correct any Deficiency in each Product and shall provide module level exchange on any defective Hardware part. Vendor shall provide next day delivery of such parts, unless otherwise agreed to in writing by WSDOT.

12.3 Services.

- (a) Vendor represents and warrants that:
 - (i) It shall perform all Services required pursuant to this Contract in a professional manner, with high quality, and in accordance with the Requirements;
 - (ii) It shall give highest priority to the performance of the Services; and
 - (iii) Time shall be of the essence in connection with performance of the Services.
- (b) Vendor shall immediately correct and re-perform Services which are not in compliance with such representations and warranties at no cost to WSDOT.

12.4 No Surreptitious Code. Vendor warrants to WSDOT that the Software provided to WSDOT under this Contract contain or shall contain neither Self-Help Code nor any Unauthorized Code. Vendor further warrants that Vendor shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict WSDOT's use of or access to the Software, Data, or Equipment, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use for any copy of the Software provided to WSDOT under this Contract.

12.5 Authorization. Vendor represents and warrants that:

12.5.1 Vendor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

12.5.2 The execution, delivery and performance of this Contract has been duly authorized by Vendor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Vendor to enter into this Contract and perform its obligations under this Contract;

12.5.3 Vendor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Vendor will conduct business in connection with this Contract; and

12.5.4 Vendor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Vendor's performance of the Services. Vendor will maintain all required certifications, licenses, permits, and authorizations during the term of this Contract at its own expense.

12.6 Ability To Perform. Vendor represents and warrants that:

12.6.1 Vendor has the financial stability to carry out at least six months of Services, including operations and Maintenance, during any period of this Contract without reimbursement for the Services or expenses;

12.6.2 Vendor has the financial resources to fund the capital expenditures required under the Contract without advances by WSDOT or assignment of any payments by WSDOT to a financing source;

12.6.3 Each Subcontractor providing a substantial amount of the Services under this Contract has the financial resources to carry out its duties under this Contract; and

12.6.4 Vendor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by Phase, stage, segment, or cost objective in order to support Change Order accounting.

12.7 Warranty Against Contingent Fees. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or

understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor. In the event Vendor breaches this Section, WSDOT shall have the right to either immediately terminate or annul this Contract without liability to WSDOT, or, in WSDOT's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

12.8 OSHA/WISHA. Vendor represents and warrants that its Products and Services, meet the current Federal and State safety and health regulations. Vendor agrees to indemnify and hold WSDOT harmless from all damages assessed against WSDOT as a result of the failure to so comply.

12.9 Survival. The provisions in this Article XII shall survive the expiration or termination of this Contract.

ARTICLE XIII. INDEMNITY; INSURANCE; LETTER OF CREDIT

13.1 General Indemnification.

13.1.1 Vendor shall, at its expense, indemnify, defend, and hold harmless WSDOT, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any: (i) claim or action caused by or arising from the negligent acts or omissions or willful misconduct of Vendor, its officers, employees, agents, or Subcontractors including but not limited to property damage, bodily injury or death; (ii) any claim or action for a breach of its obligations in Article XVII; and (iii) sanctions, penalties, disallowances or fines. WSDOT shall give Vendor notice of such claim. WSDOT agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Vendor without Vendor's written consent.

13.1.2 The indemnification provisions in this Section 13.1 shall survive the expiration or termination of this Contract.

13.2 Insurance.

13.2.1 Vendor shall, during the term of this Contract, and at its expense acquire and maintain in full force and effect, the insurance described in this Section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to WSDOT within one (1) business day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at WSDOT's sole option, result in this Contract's termination

13.2.2 The minimum acceptable limits shall be as indicated below, with no deductible unless otherwise specified or approved by WSDOT in advance, for each of the following categories:

(a) Commercial General Liability (CG 00 01 12 04, ISO or substitute liability form providing equivalent coverage) covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$2 million per occurrence/\$4 million general aggregate;

(b) Business Automobile Liability (CA 00 01 10 01, ISO or substitute liability form providing equivalent coverage) covering owned, hired, or non-owned vehicles, the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;

(c) Employers Liability (Stop Gap) insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;

(d) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon Section 13.2.7 below, and coverage of not less than \$2 million per occurrence/\$4 million general aggregate;

(e) Crime Coverage with a deductible not to exceed \$1 million, conditioned upon Section 13.2.7 below, and coverage of not less than **\$10 million** single limit per occurrence and **\$20 million** in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty; and

(f) Umbrella policy providing excess limits over the above referenced general liability and automobile liability primary policies in an amount not less than \$6 million per policy.

13.2.3 Such insurance policies or related Certificates of Insurance (Certificates) shall name WSDOT as an Additional Named Insured on all general liability, automobile liability, employers' liability, and umbrella policies. Such policies or related Certificates shall also reference this Contract number **K XXX** and shall have a condition that they not be revoked by the insurer until 45 calendar days after written notice of intended revocation thereof shall have been given to WSDOT by the Vendor's Insurance Broker. Under no circumstances will WSDOT be liable for any policy premiums or deductibles.

13.2.4 All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State on behalf of WSDOT and shall include a severability of interests (cross-liability) provision.

13.2.5 Vendor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each

Subcontractor. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

13.2.6 Prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. WSDOT will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

13.2.7 For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall continue such coverage for six years beyond the expiration or termination of this Contract, naming WSDOT as an additional insured and providing WSDOT with certificates of insurance on an annual basis.

13.2.8 Letter of Credit. Pursuant to Section 13.4 the Vendor shall obtain a Irrevocable Stand-By Letter of Credit which shall be used to cover Insurance premiums and deductibles as required herein should Vendor be in breach of any its Insurance obligations.

13.2.9 Vendor shall furnish to WSDOT copies of certificates of all required insurance within fourteen (14) calendar days of this Contract's effective date and copies of renewal certificates of all required insurance within 14 days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section.

13.2.10 By requiring insurance herein, WSDOT does not represent that coverage and limits will be adequate to protect Vendor, nor limit WSDOT's right to seek additional recovery from the Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to WSDOT in this Contract.

13.3 Waiver of Statutory Immunity. Vendor intentionally accepts the terms of this Section and waives any and all statutory immunity provided by the Washington State Industrial Insurance Act, RCW Title 51, with regard to all rights of the indemnities stated herein. THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED, HAS BEEN EXPRESSLY AND SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO DSHS.

13.4 Letter of Credit.

13.4.1 Initial Amount. Within 10 days of execution of this Contract Vendor shall provide for WSDOT's benefit an Irrevocable stand-by Letter of Credit from a federally insured financial institution in the initial amount of **\$15 million dollars.**

13.4.2 Annual Adjustment. The Vendor shall adjust the Letter of Credit amount annually on June 30, beginning in the year 2011. The adjusted Letter of Credit amount shall be

equal to two (2) times the average gross monthly toll revenue for the Statewide Tolling Program for the previous year.

13.4.3 The Letter of Credit shall remain in place and available to WSDOT during the initial and any subsequent terms of this Contract and for six years beyond the expiration or termination of this Contract. In addition, the Letter of Credit shall:

(a) be in substantially the form attached hereto as **Exhibit E – Letter of Credit**.

(b) secure the Vendor's performance including without limitation performance of Tasks, Services and Deliverables in accordance with this Contract, the PMP, and the Requirements contained in the RFP, Response and Deliverables;

(c) serve as surety against damages, costs or expenses, including costs to cover or cure resulting from Vendor's default in performance hereunder or liability caused by Vendor related to or arising out of this Contract;

(d) be used to pay for any Insurance premiums to continue such claims-made policies, or available tails, whichever is appropriate, at WSDOT's sole option, in the event Vendor defaults on its obligations herein and fails to make said payments;

(e) provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible.

(f) become payable in part or up to its full value upon Vendor's default or breach, or pursuant to a settlement or judgment arising out of Arbitration or Litigation related to this Contract and upon WSDOT's showing of the costs incurred to cover, cure, or otherwise administer the Services required under this Contract or any settlement or judgment hereunder.

13.4.4 WSDOT may seek other remedies in addition to that stated herein.

ARTICLE XIV.

DEFAULT; TERMINATION; DAMAGES; REMEDIES

14.1 Vendor Default.

14.1.1 Termination for Contractor's Material Breach. If Contractor materially breaches this Contract, then WSDOT may give Vendor written Notice of such breach. Vendor will have 30 days to correct the breach upon receipt of such Notice. If the breach is not corrected within 30 days, this Contract may be terminated immediately, in whole or in part, by Notice from WSDOT to Vendor. The option to terminate shall be at the sole discretion of WSDOT.

14.1.2 Termination for Conflict of Interest. WSDOT may terminate this Contract by Notice to Vendor if WSDOT determines, after due notice and examination, that

Vendor has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

14.1.3 Suspension for Default. In the event of a Vendor default, WSDOT reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds: (a) during the investigation of the alleged Vendor default; (b) pending corrective action by Vendor of a default; or (c) pending a decision by WSDOT to terminate this Contract.

14.1.4 Open Market Procurement. In the event of termination or suspension of all or part of this Contract by WSDOT for a Vendor default, WSDOT shall have the right to procure the Products and Services on the open market and Vendor shall be liable for all costs, expenses, and damages incurred by WSDOT for such default and termination, including but not limited to: (a) the cost difference between the original Contract Price for the Products and Services and the replacement costs of such Products and Services acquired from another vendor; (b) all administrative costs directly related to the replacement of this Contract, including but not limited to costs of competitive bidding, mailing, advertising, applicable fees, charges, or penalties, and WSDOT staff and consultant time costs; and (c) any other costs to WSDOT resulting from Vendor's default and the termination of this Contract for such default. WSDOT shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe WSDOT for Vendor's default.

14.1.5 No Release. Waiver or acceptance of any default of the terms of this Contract by WSDOT shall not operate as a release of Vendor's responsibility for any prior or subsequent default.

14.1.6 Repeated Defaults. If Vendor defaults on any provision in this Contract three times within a six-month period, the third default shall be deemed "non-curable" and this Contract may be terminated by WSDOT on not less than 30 calendar days written notice.

14.1.7 Termination Deemed for Convenience. If it is determined for any reason Vendor's default or failure to perform is not within the Vendor's control, fault, or negligence, a termination by WSDOT for default shall be deemed to be a termination for convenience under Section 14.3.

14.2 WSDOT Termination for Rejection of Deliverables. In addition to WSDOT's other rights to terminate Vendor, Vendor is unable to correct Deficiencies in a Deliverable, WSDOT shall have the right to immediately terminate this Contract, in whole or in part, without penalty or liability to WSDOT, with such a termination being deemed a termination due to the default of Vendor hereunder, and return the Deliverable to Vendor and other Deliverables impacted or affected by the rejected Deliverable. If WSDOT terminates this Contract under this Section, Vendor shall, within 20 days thereafter, refund to WSDOT all payments made to Vendor for the returned Deliverables and Services rendered therefore.

14.3 WSDOT Termination for Convenience or Necessity.

14.3.1 WSDOT may terminate this Contract, in whole or in part, without penalty or further liability as follows:

(a) In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSDOT may terminate this Contract, in whole or in part, by seven days written notice to Vendor. This Section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Products or Services from a third party;

(b) In the event funding to WSDOT from State, Federal, or other sources is withdrawn, reduced or limited in any way after the Effective Date of this Contract and prior to normal completion, WSDOT may terminate this Contract by seven calendar days written notice to Vendor;

(c) If funds are not allocated to WSDOT to continue this Contract in any future period, WSDOT may at its option terminate this Contract by seven days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. WSDOT agrees to notify Vendor in writing of such non-allocation at the earliest possible time. This Section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Products or Services from a third party;

(d) WSDOT may terminate this Contract by written notice to Vendor if WSDOT determines, after due notice and examination, that the Vendor has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WSDOT shall be entitled to pursue the same remedies against Vendor as it could pursue under the Termination for Default section;

(e) Immediately, upon written notice, if a receiver is appointed to take possession of Vendor's assets, the Vendor makes a general assignment for the benefit of creditors, or the Vendor becomes insolvent or takes or suffers action under the Bankruptcy Act; and

(f) Upon not less than 30 calendar days prior written notice, unless an emergency exists, as determined by WSDOT, then immediately, if WSDOT determines that it is in the best interest of WSDOT to terminate this Contract.

14.3.2 If this Contract is terminated pursuant to this Section 14.3, WSDOT is liable only for payments required by the terms of this Contract for Products and Services for which Acceptance has been given prior to the effective date of termination.

14.4 Vendor Termination for WSDOT's Nonpayment. Subject to WSDOT's exercise of its withholding rights and other remedies and rights under the Contract, if WSDOT fails to pay Vendor material Prices when due under the Contract and fails to make such payments within 90 days of receipt of notice from Vendor of the failure to make such payments, Vendor may, by giving Notice to WSDOT, terminate this Contract as of a date specified in the notice of termination. Vendor shall not have the right to terminate the Contract for WSDOT's breach of the Contract except as provided in this Section. In the event of termination of this Contract by Vendor for a WSDOT default, WSDOT shall be liable only for payments required by the terms of this Contract for Products and Services which have received Acceptance from WSDOT prior

to the effective date of termination, subject to WSDOT's exercise of its rights and remedies under the Contract.

14.5 Termination Procedure.

14.5.1 In addition to the procedures set forth below, if WSDOT terminates this Contract, in whole or in part, Vendor shall follow any procedures WSDOT specifies in WSDOT's notice of termination.

14.5.2 Upon termination of this Contract, in whole or in part, WSDOT, in addition to any other rights provided in this Contract, may require Vendor to deliver to WSDOT any property or Products specifically produced or acquired for the performance of such part of this Contract as has been terminated.

14.5.3 Unless otherwise provided herein, WSDOT shall pay to Vendor the agreed-upon Price, if separately stated, for the Products or Services for which Acceptance has been given by WSDOT; provided that, in no event shall WSDOT pay to Vendor an amount greater than Vendor would have been entitled to for each such Product or Service if this Contract had not been terminated. Failure to agree with such determination shall be a dispute subject to Article XV. WSDOT may withhold from any amounts due Vendor such sum as WSDOT determines to be necessary to protect WSDOT from potential loss or liability.

14.6 Vendor Payments to WSDOT. Vendor shall pay amounts due WSDOT as the result of termination within 30 calendar days of notice of amounts due. If Vendor fails to pay such amounts within that 30-day period, WSDOT may charge late payment fees as set forth in Section 14.10 herein.

14.7 Transition Support.

14.7.1 Upon expiration of the Contract or termination of this Contract for any reason (including a WSDOT event of default) Vendor shall confer and cooperate with WSDOT to determine the activities required in order to terminate in a safe and orderly manner and to allow the transition without interruption of Services performed by Vendor hereunder to a Replacement Vendor, subsequent operator, or WSDOT as applicable.

14.7.2 Vendor will provide Services as necessary including but not limited to those provided in Vendor's Business Continuity Plan and as necessary to enable WSDOT or its designee to effectively close out the Contract and move the Work to another vendor or to perform the Work by itself.

14.7.3 Within ten days of receipt of the notice of termination, Vendor shall provide, in machine-readable form, an up-to-date, usable copy of the Data in a format as required by WSDOT and a copy of all documentation needed by WSDOT to utilize the Data. Vendor will ensure that all consents or approvals to allow Vendor and Subcontractors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to WSDOT. Vendor will supply necessary information at time cutover including web portal content, security and video data.

14.7.4 Immediately upon termination or expiration of the Contract, Vendor shall (i) assemble at its offices and make available for WSDOT or Vendor's successor all Subcontractor contracts or other agreements related to the execution of the Work and which are in effect immediately prior to termination or expiration; (ii) execute and deliver to WSDOT or such named successor, as applicable written assignments and assumptions agreements with respect to such related contracts or agreements; and (iii) terminate effective on the same date as the effective date of expiration or termination of this Contract such other related contracts or agreements as neither WSDOT nor such successor elects, at its discretion, to assume.

14.8 Liquidated Damages.

14.8.1 The Parties agree that any delay or failure by the Vendor to timely or adequately perform its obligations in the Contract, or as delineated in a Change Order will constitute a default. Such default will interfere with the proper and timely Implementation and operation of the CSC, to the loss and damage of WSDOT, the statewide tolling Program, the individual Toll Facility funds, motor vehicle fund and the citizens of the State. Further, WSDOT will incur costs to maintain the functions that would otherwise have been performed by Vendor.

14.8.2 As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, WSDOT and Vendor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in **Exhibit F ---Performance Measures and Liquidated Damages Tables** attached hereto and incorporated by this reference, and the parties agree that Vendor shall pay such amounts as Liquidated Damages and not as a penalty.

14.8.3 The parties also acknowledge that Liquidated Damages may be withheld from Contract payments by WSDOT or charged to the Vendor at the discretion of WSDOT. Where the Work is to be performed monthly, the payment may be withheld until the Task is properly performed and no back payment for unperformed tasks will be due.

14.8.4 The Parties acknowledge and agree that Vendor could incur liquidated damages for more than one Milestone if Vendor fails to timely perform its obligations. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy WSDOT may have under this Contract for Vendor's default or breach of this Contract including without limitation the right to terminate as described below.

14.9 Non-Exclusive Remedies. The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law; Provided, that Vendor shall have no right to seek non-monetary relief in court with the exception of seeking injunctive relief to enjoin WSDOT from violating the terms of any license to Intellectual Property granted to WSDOT under this Contract. The provisions in this Section shall survive the expiration or termination of this Contract.

14.10 Late Payment Fees. If Vendor fails to make timely payment of any amounts due WSDOT under this Contract, at WSDOT's option, the delinquent sum shall bear interest at the rate of 12% per annum, or the highest rate of interest allowable by law, whichever is greater; Provided that if the highest rate allowable by law is less than 12%, interest charged hereunder shall not exceed that amount. Interest on all delinquent amounts shall be calculated from the

original due date to the date of payment. Also there shall be a charge for any check returned uncollectable in accordance with WAC 468-20-900. WSDOT and Vendor agree that such charges represent a fair and reasonable estimate of the costs incurred by WSDOT by reason of late payments and uncollectable checks. Further, WSDOT's acceptance of late payment charges and/or any portion of the overdue payment shall in no event constitute an accord and satisfaction, compromise of such payment, or a waiver of Vendor's default with respect to such overdue payment, nor prevent WSDOT from exercising any other rights and remedies granted in this Contract. When a delinquency exists, any payments received will be applied first to the late payment charge and late payment fees, and next to the delinquent payment. The provisions in this Section shall survive the expiration or termination of this Contract.

14.11 Damages Disclaimers and Limitations.

14.11.1 WSDOT'S DISCLAIMERS AND LIMITATION OF LIABILITY.

WSDOT SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. IN NO EVENT SHALL WSDOT'S AGGREGATE LIABILITY TO VENDOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS THE MAXIMUM AMOUNT.

14.11.2 Vendor's Limitation of Liability. Vendor will not be liable to WSDOT to the extent of any loss, damage, or liabilities:

(a) Caused by the failure of WSDOT, another State agency, or a WSDOT vendor or contractor to perform in connection with this Contract and such nonperformance prevented Vendor from performing in accordance with this Contract, so long as Vendor notifies WSDOT and/or vendor immediately upon Vendor's discovery of non-performance and acts reasonably to assist in correcting nonperformance; or

(b) Resulting from Vendor acting prudently in accordance with instructions given by authorized representatives of WSDOT or other authorized State agencies.

14.12 Performance Measures. If the Work fails to meet Performance Measures during the term and while Vendor is providing operations and Maintenance Services, Vendor shall modify, reconfigure, upgrade or replace Software, Equipment and Services as required to meet the Performance Measures at no additional cost to WSDOT in order to provide a solution that complies with such Performance Measures.

14.13 Suspension for Convenience. WSDOT shall have the right at any time to order the Services of Vendor fully or partially stopped for its own convenience for up to 30 consecutive days. Vendor will receive notice of the reasons for such an order. The Schedule shall be delayed on a day-to-day basis to the extent WSDOT has issued a stop work order to Vendor and such stop work order is causing delays in completing Services in accordance with

the Schedule. Vendor shall have the right to submit claims in accordance with the terms of Section 14.15, as a result of stop work orders issued under this Section.

14.14 Cover. If, in the reasonable judgment of WSDOT, a default by Vendor is not so substantial as to require termination, reasonable efforts to induce Vendor to cure the default are unavailing, Vendor fails to cure such default within ten days of receipt of notice from WSDOT, and the default is capable of being cured by WSDOT or by another resource without unduly interfering with continued performance by Vendor, WSDOT may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event Vendor shall reimburse WSDOT for the reasonable cost of the Services in default. In addition, Vendor must cooperate with these resources in allowing access to the System.

14.15 Claims. Vendor must submit claims against WSDOT within the earlier of six months of the date upon which Vendor knew of the existence of the claim or six months from expiration or termination of the Contract. No claims shall be allowed unless notice of such claim has been given within the above-described time period. Such claims must be submitted to the WSDOT Program Manager or his or her designee by Vendor in the form and with the certification prescribed by the WSDOT Program Manager or his or her designee. Upon failure of Vendor to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred. Submission of such claims against WSDOT shall be, except as provided in Sections 14.4 and 17.5.7, Vendor's sole and exclusive remedy in the event that WSDOT breaches this Contract.

ARTICLE XV. DISPUTE RESOLUTION

15.1 Initial Process.

15.1.1 If a dispute arises between the Parties, the Managers shall confer to resolve disputes that arise under this Contract as requested by either Party immediately or within three Business Days of receiving notice of a dispute. The Managers shall use their best efforts and exercise good faith to resolve such disputes.

15.1.2 If the WSDOT and Vendor Program Managers are unable to resolve a dispute within five (5) business days, the aggrieved Party shall elevate the dispute to the next management level by providing a signed written Notice of Dispute to the Directors who shall use their best efforts to resolve the dispute. The Notice of Dispute shall contain:

- (a) The date and nature of the Disputed order, direction, instruction, interpretation or determination;
- (b) A full discussion of the circumstances which caused the Dispute, including names of persons involved, time, duration and nature of the Work involved, and a review of the plans and Contract provisions referenced to support the Dispute;
- (c) The estimated dollar cost, if any, of the Work in Dispute and a detailed breakdown showing how that estimate was determined; and

(d) An analysis of the Program Schedule showing the schedule change or disruption if the Vendor is asserting a schedule change or disruption; and

(e) If the Dispute is continuing, the information required above shall be supplemented upon request by the Directors until the Dispute is resolved.

15.1.3 Throughout any Work in Dispute, the Vendor shall keep complete records of extra costs and time incurred. The Vendor shall permit the WSDOT Director access to these and any other records related to the Disputed Work as determined by the WSDOT Director.

15.1.4 The Directors shall have ten business days to resolve the dispute between the parties. If the Directors are unable to resolve the Dispute, the aggrieved party may provide a signed written Request for Dispute Review Board which would include the information provided to the Directors in addition to any necessary supplements as outlined below.

15.2 Dispute Review Board.

15.2.1 Dispute Review Board Purpose. The Board will consider disputes referred to it and furnish recommendations to the WSDOT and Vendor to assist in the resolution of the differences between them. The purpose of the Board response to such issues is to provide nonbinding findings and recommendations and is designed to expose the disputing parties to an independent view of the dispute.

15.2.2 Board Knowledge. The Board members will be especially knowledgeable toll operations and shall discharge their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of the Contract

15.2.3 Disputes Review Board Membership.

(a) The Board shall consist of one (1) member selected by the WSDOT and one (1) member selected by the Vendor, with these two (2) members to select the third member. The first two (2) members shall be mutually acceptable to both the WSDOT and the Vendor. If one (1) or both of the two (2) members selected are not acceptable to the Vendor, another selection shall be made.

(b) The WSDOT and Vendor shall each select their respective Board member and negotiate an agreement, separate and apart from this Contract, with their respective Board member within 7-calendar days after the parties have agreed to establish a Board.

(c) The agreements with these two (2) Board members shall contain language imposing the "Scope of Work" and "Suggested Administrative Procedures" for Disputes Review Boards available at www.wsdot.wa.gov/Consulting/. These negotiated agreements shall also include clauses that require the respective selected members to immediately pursue selection of a third member. The goal is to obtain a third Board member who will complement the first two (2) by furnishing a needed expertise, which will facilitate the Board's operations.

(d) In case a member of the Board needs to be replaced, the replacement member will be appointed in the same manner as the replaced member was appointed. The appointment of a replacement Board member will begin promptly upon determination of the need for replacement and shall be completed within 7-calendar days. Service of a Board member may be terminated at any time with not less than 7-calendar days notice as follows:

(i) The WSDOT may terminate service of the WSDOT appointed member.

(ii) The Vendor may terminate service of the Vendor appointed member.

(iii) The third member's services may be terminated by agreement of the other 2 members.

(iv) By resignation of the member.

(e) Termination of a member will be followed by appointment of a substitute as specified above. No member shall have a financial interest in the Contract, except for payments for services on the Board. The WSDOT-selected member and the Vendor selected member shall not have been employed by the party who selected them within a period of 1-year; except that, service as a member of other Disputes Review Boards on other contracts will not preclude a member from serving on the Board for this Contract.

15.2.4 Dispute Review Board Compensation. Compensation for the Board members, and the expenses of operation of the Board, shall be shared by the WSDOT and Vendor in accordance with the following:

(a) The WSDOT will compensate directly its selected member.

(b) The Vendor shall compensate directly its selected member.

(c) The WSDOT and Vendor shall share equally compensation of the third member together with all of the operating expenses of the Board. These equally shared expenses shall be billed to and paid by WSDOT. The Vendor's share will be deducted from monies due or coming due the Vendor.

(d) The WSDOT, through the Director, will provide administrative services, such as conference facilities and secretarial services, to the Board and the WSDOT will bear the costs for this service.

15.2.5 Disputes Review Board Procedures.

(a) The Board, the WSDOT, and the Vendor shall develop by agreement the Board's rules of operation and procedures to be followed for the Program. In developing the Contract, the parties shall take into consideration their respective duties and responsibilities set forth in the "**Scope of Work**" section of their agreements. The parties may

also consider the “Suggested Administrative Procedures” for the Board’s operation included in their agreements. These Procedures express, in general terms, the policy for the creation and operation of the Board.

(b) If the dispute is referred to the Board, then the Board will consider the matter in dispute and provide recommendations concerning:

(i) The interpretation of the Contract

(ii) Entitlement to additional compensation or time for performance

(iii) The amount of additional compensation or time for performance following a recommendation of entitlement by the Board provided that; (a) the parties were not able to reach a resolution as to the disputed amount or time; (b) the WSDOT Director has made a unilateral determination of the amount of compensation or time under the Change Order process; and (c) the Vendor has Disputed the WSDOT Director’s unilateral determination.

(iv) Other subjects mutually agreed by the WSDOT and Vendor to be a Board issue.

15.2.6 Dispute Resolution Board Schedule. Once the Board is established, the dispute resolution process shall be as follows:

(a) Board hearing dates will be scheduled by agreement of the parties.

(b) The Vendor and the WSDOT shall each be afforded an opportunity to be heard by the Board and to offer evidence. Either party furnishing any written evidence or documentation to the Board must furnish copies of such information to the other party a minimum of 15-calendar days prior to the date the Board sets to convene the hearing for the dispute. Either party shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the dispute and furnish copies to the other party.

(c) After the hearing is concluded, the Board shall meet in private and reach a conclusion supported by two (2) or more members. Its findings and recommendations, together with its reasons shall then be submitted as a written report to both parties. The recommendations shall be based on the pertinent Contract provisions, facts and circumstances involved in the dispute. The Contract shall be interpreted and construed in accordance with the laws of the State of Washington. The Board shall make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report.

(d) Within 30-calendar days of receiving the Board recommendations, both the WSDOT and the Vendor shall respond to the other in writing signifying that the dispute is either resolved or remains unresolved. Although both parties should place weight upon the Board recommendations, the recommendations are not binding.

(e) In the event the Board's recommendations do not lead to resolution of the dispute, all Board records and written recommendations, including any minority reports, will be admissible as evidence in any subsequent arbitration or litigation.

(f) If the Board's assistance does not resolve the dispute, the Vendor may seek arbitration or judicial relief.

(g) Full compliance by the Vendor with the provisions of this section is a contractual condition precedent to the Vendor's right to seek judicial relief.

ARTICLE XVI. ARBITRATION AND LITIGATION

16.1 General Process. Should a dispute remain unresolved after utilizing the Dispute Review Board process, the parties may proceed to Arbitration or Litigation subject to the following:

16.2 Binding Arbitration of Claims \$1,000,000 or Less. Vendor and WSDOT mutually agree that those claims which total \$1,000,000 or less, shall be resolved through mandatory and binding arbitration as described herein.

16.3 Procedures to Pursue Arbitration. If the dispute cannot be resolved through administrative procedures provided in Section 15, the aggrieved Party shall advise the Directors, in writing, that mandatory and binding arbitration is desired.

(a) **Administration of Arbitration.** The organization that administers the Arbitration shall be as agreed to by the Directors or, if the Parties cannot agree, arbitration shall be administered through **JAMS**.

(b) **Filing.** The aggrieved Party shall file a demand for Arbitration with the chosen Arbitration organization, or absent the Parties mutual agreement, JAMS.

(c) Selection of the Arbitrator and administration of the Arbitration will be according to the rules mutually agreed to by the Parties, or absent agreement, in accordance with the rules of administering Arbitration organization.

(d) The WSDOT and the Vendor mutually agree the venue of any arbitration hearing shall be within the State of Washington and any such hearing shall be conducted within the State of Washington.

(e) The WSDOT and the Vendor mutually agree to be bound by the decision of a single arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of Thurston County. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

16.4 Timing of Arbitration. Unresolved disputes which do not involve delays or impacts to unchanged Work may be brought to binding arbitration prior to Physical Completion

of the Program, provided that all the administrative remedies provided for in the Contract have been exhausted and the Vendor certifies in writing that claims for delays or impacts to the Work will not result from the dispute.

Unless the WSDOT and the Vendor agree otherwise, all other unresolved claims (disputes which have been pursued to the claim status) which arise from a Contract must be brought in a single arbitration hearing and only after Physical Completion of the Contract. The total of those unresolved claims cannot be greater than \$1,000,000 to be eligible for arbitration.

In addition, the Vendor agrees arbitration proceedings must commence, by filing of the aforementioned demand for arbitration, within 180 calendar days of final acceptance of the contract.

16.5 Litigation of Claims in Excess of \$1,000,000. The Vendor and the WSDOT mutually agree that those claims in excess of \$1,000,000, submitted in accordance with Section 15 and not resolved by nonbinding ADR processes, shall be resolved through litigation unless the parties mutually agree to resolve the claim through binding arbitration.

16.5.1 Litigation Time Limitation and Jurisdiction. For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims or causes of action which the Vendor has against the State of Washington arising from the Contract shall be brought within **180 days** from the date of final acceptance of the Contract by the State of Washington. The parties understand and agree that the Vendor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action. It is further agreed that any such claims or causes of action shall be brought only in the Superior Court of Thurston County.

ARTICLE XVII. RECORDS; AUDITS; PUBLIC RECORDS; CONFIDENTIALITY

17.1 Review and Access to Vendor's Records. Vendor shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years beginning from the date of the expiration, termination or receipt of final payment on this Contract, whichever is later.

WSDOT's internal audit staff, management, its authorized agents and/or Washington State Auditors shall have full access to and the right to examine any of said materials during said period.

If any audit, litigation, or claim is started prior to the expiration of the six-year retention period, the records shall be retained until all audits, litigation, or claims involving the records have been resolved. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration, termination or receipt of final payment on this Contract, whichever is later.

17.2 Access to Facilities, Records, Systems. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WSDOT Contract Administrator, WSDOT Director of Internal Audit, the Office of the State Auditor, as well as federal officials so authorized by law, rule, regulation or contract, at no additional cost to the WSDOT. During the term of this Contract, Vendor shall provide access to original records for examination, inspection, copying, or audit, at a location in Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor.

17.3 Subcontractors. Vendor shall incorporate in its subcontracts this Section's records retention and review requirements.

17.4 Excluded Materials.. It is agreed that books, records, documents and other evidence related to Vendor's cost structure including overhead and profit factors shall be excluded from WSDOT's review unless the cost or any other material issues under this Contract is calculated or derived from these factors.

17.5 Audit Requirements.

17.5.1 Government Audits. Vendor shall provide Services to support WSDOT's internal audit staff and external auditors, to meet all audit requirements. Vendor shall provide all financial, transaction, and inventory records and reports to support auditing. Vendor shall grant full access to its records, staff, data, systems, and other information for its Tolling Services, to WSDOT's Internal Audit staff and external Auditors.

17.5.2 External Audits. Vendor shall obtain an annual audit for services related to this contract, in accordance with Statement on Auditing Standards (SAS) 70 and 88 which must include: "An Audit of Controls Placed in Operation and Tests of their Operating Effectiveness" (A Type II SAS 70/88 Audit). WSDOT has the authority to select Control Objectives for the annual SAS 70/88 audit. WSDOT will have access to review and copy the audit firm's working papers and other official documents supporting the SAS 70/88 audit report.

17.5.3 Vendor shall obtain annual attest engagements examining Vendor assertions on compliance with accuracy and availability requirements in **Performance Measures and Liquidated Damages Table -- Exhibit F** hereto. These engagements will be conducted in accordance with the AICPA Audit Standards. Any specific attest procedures for the auditor requested by Vendor shall be subject to approval by WSDOT.

17.5.4 Vendor shall conduct regular audits as part of standard operating procedures to ensure the accuracy of sales and other transactions, invoices, violations, payments, and other items processed by the CSC and posted to Customer accounts.

17.6 Public Records. Vendor acknowledges that WSDOT is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any documents and records that are prepared by Vendor and are in anyway related to this Contract may be determined to be public records, and as such may be subject to public disclosure except as otherwise described herein.

17.7 Access and Protection. During the term of the Contract, Vendor and WSDOT will have access to and become acquainted with each party's Confidential Information and Proprietary Information. Except for disclosure pursuant to Section 17.5, WSDOT and Vendor, and each of their officers, employees and agents, shall, subject to State laws and regulations and in accordance with this Section 17.6, maintain (a) all Confidential Information of the other party in strict confidence, and (b) all Proprietary Information in the same manner as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information or Proprietary Information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section 17.6, as authorized in writing by the other party, as otherwise specifically permitted or described herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable Federal and State law and regulation and this Section 17.6, the other party's Confidential Information and Proprietary Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Contract.

17.7.1 Vendor Proprietary Information. Any specific information that is claimed by Vendor to be Proprietary Information, must be clearly identified as such by Vendor. To the extent consistent with chapter 42.56 RCW, WSDOT shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, WSDOT will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, WSDOT will release the requested information on the date specified.

17.7.2 WSDOT Confidential Information -- Customer Data. In providing CSC services under this Contract, Vendor will be compiling, coordinating and maintaining Customer Data including but not limited to personal information provided by a customer or related to the Customer's account activity or usage of toll facilities. Such Data is owned by WSDOT and is confidential under RCW 46.63.160 and chapter 42.56 RCW. It may be used for Toll collection and enforcement purposes only, and it shall not be provided to the public or to law enforcement under any circumstances, except upon presentation of a court order or subpoena and upon authorization by WSDOT to release such Data. Vendor shall ensure that its Subcontractors or suppliers that may have or gain access to Customer Data are subject to the same confidentiality requirements.

17.7.3 Third Party Access. Except for disclosures pursuant to Section 17.6.1, each Party agrees that prior to disclosing any Proprietary Information or Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 17.6 with respect to the Proprietary Information and Confidential Information.

17.7.4 In addition to the requirements expressly stated in this Section 17.6, Vendor and its Subcontractors will comply with any policy, rule, or reasonable requirement of

WSDOT that relates to the safeguarding or disclosure of information relating to the Services performed by Vendor under this Contract.

17.7.5 Security Requirements. Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of WSDOT (which security standards, practices, and procedures of WSDOT shall have been provided to Vendor in writing) and which the Vendor has specified in its Security Plan with respect to information and materials which come into each party's possession and to which such party gains access under this Contract. Such information and materials include without limitation all Proprietary Information and Confidential Information.

17.7.6 Records Retention. The Vendor shall retain all business records in accordance with State of Washington General as well as WSDOT Records Retention Schedules as appropriate to the types of records in question. Vendor shall take particular care to retain Customer Data as described in the appropriate WSDOT Records Retention Schedule.

17.7.7 Return. Subject to record retention laws and to WSDOT's License rights under Section 11.2.1, each party shall promptly return to the disclosing party, on termination or expiration, all of the disclosing party's Confidential Information and Proprietary Information, including copies thereof.

17.7.8 WSDOT Injunctive Relief. Vendor shall immediately report to WSDOT any and all unauthorized disclosures or uses of WSDOT's Confidential Information or Proprietary Information of which it or its Staff is aware or has knowledge. Vendor acknowledges that any publication or disclosure of WSDOT's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to WSDOT. If Vendor should publish or disclose such Confidential Information or Proprietary Information to others without authorization, WSDOT shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

17.7.9 Vendor Injunctive Relief. WSDOT will immediately report to Vendor any and all unauthorized disclosures or uses of Vendor's Confidential Information or Proprietary Information of which WSDOT is aware or has knowledge. WSDOT acknowledges that any publication or disclosure of Vendor's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Vendor. If WSDOT should publish or disclose such Confidential Information or Proprietary Information to others without authorization, Vendor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

17.7.10 Exceptions. The following information shall not be considered Confidential Information or Proprietary Information for the purposes of this Contract: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

17.8 Survival. The provisions in this Article VXII shall survive the expiration or termination of this Contract.

ARTICLE XVIII. GENERAL

18.1 Recitals. The Recitals set forth in Article I herein are hereby incorporated into this Contract.

18.2 Exhibits and Attachments. All exhibits and attachments referenced in this Contract are hereby incorporated into this Contract.

18.3 Survivorship. All license and purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that, by their sense and context, are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

18.4 Assignments.

18.4.1 Vendor shall not assign this Contract in whole or in part without the express written permission of WSDOT.

18.4.2 WSDOT may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington.

18.5 Publicity.

18.5.1 The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products by WSDOT and shall not be so construed by Vendor in any advertising or other publicity materials.

18.5.2 Vendor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein WSDOT's name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT's name therewith may, in WSDOT's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of WSDOT *prior* to such use.

18.5.3 The provisions in this Section shall survive the expiration or termination of this Contract.

18.6 Independent Status of Vendor. In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an

independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit, which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

18.7 Entire Contract. This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof, and any understandings, agreements, representations, or warranties not contained in this Contract or in the **Scope of Work**, or written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or Requirements of this Contract will be effective without the written consent of both Parties.

18.8 Modifications and Amendments.

With the exception of a valid Change Order, as delineated in Section VI herein, no modification, amendment, alteration, addition, or waiver of any Section or condition of this Contract shall be effective or binding unless it is in writing and signed by the WSDOT Contract Administrator and the Vendor Contracting Officer. Only the WSDOT Contract Administrator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any provision, benefit or obligation of this Contract on behalf of WSDOT.

18.9 Waiver. Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the WSDOT Contract Administrator and the Vendor Contracting Officer.

18.10 Severability. If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end, the terms and conditions of this Contract are declared severable.

18.11 Governing Law. This Contract shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the State of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment would govern. Unless otherwise required by law, the jurisdiction for any action hereunder shall be exclusively in the Superior Court for the State of Washington. The exclusive venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

18.12 Order of Precedence. In the event of any conflicts, resolution shall be resolved in the following order of precedence:

- 18.12.1** Any applicable Federal Law and Regulations.
- 18.12.2** Any applicable State Law and Regulations.
- 18.12.3** This Contract (K____), and any amendment thereto.

18.12.4 Business Rules, **Scope of Work**, and **Exhibit D – Exceptions to Scope of Work**.

18.12.5 Vendor's Proposal

18.12.6 The RFP

18.13 Uniform Commercial Code (UCC) Applicability.

18.13.1 **Where applicable**, this Contract shall be governed by any applicable sections of the UCC as set forth in Title 62A RCW.

18.13.2 To the extent this Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

18.13.3 In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

18.14 Antitrust Violations. Vendor and WSDOT recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the purchaser. Therefore, Vendor hereby assigns to WSDOT any and all claims for such overcharges as to goods, Products, and Services purchased in connection with this Contract, except as to overcharges not passed on to WSDOT resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract. The provisions in this Section shall survive the expiration or termination of this Contract.

18.15 Attorneys' Fees and Costs. In the event of any controversy, claim, or dispute arising out of this Contract, each Party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

18.16 Contract Execution. The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

18.17 Counterparts. This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each Party, for all purposes.

18.18 Debarment and Suspension. Vendor certifies to WSDOT that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in Federal or State government contracts. Vendor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

18.19 Force Majeure. Neither Vendor nor WSDOT shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power

failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington
Department of Transportation

Vendor Name

Signature

Signature

Bill Ford

Print or Type Name

Print or Type Name Date

Assistant Secretary, Finance and
Administration

Title

Title

Date

Date

APPROVAL AS TO FORM:

Elizabeth Lagerberg
Assistant Attorney General

EXHIBIT A
PROGRAM MANAGEMENT PLAN

EXHIBIT B
PRICING AND DELIVERY TABLES

EXHIBIT C

GUARANTY

In consideration of the execution by the **State of Washington Department of Transportation (the "WSDOT")** of the Statewide Tolling Customer Service Center Contract dated _____ (the "Contract") with _____ [subsidiary] ("Subsidiary"), _____ ("Parent") unconditionally and irrevocably guarantees to the WSDOT, on the terms and conditions herein, the full and faithful performance by Subsidiary of all of the obligations undertaken by Subsidiary pursuant to the Contract and as it may hereafter be amended, modified, or extended from time to time, by work authorizations or otherwise.

If Subsidiary fails or refuses to complete any of its obligations, Parent shall complete, or cause to be completed, the obligation that Subsidiary failed or refused to complete, or be considered to be in breach of the Contract to the same extent as Subsidiary, pursuant to the terms and conditions of the Contract.

Parent agrees that it shall not be necessary for WSDOT, or its successors or assigns to exercise its rights against Subsidiary, before proceeding to enforce its rights under this Guaranty. Parent waives: (a) notice of acceptance of this guaranty; (b) notice of any amendments, work authorizations, extensions of time for performance, changes in the work, or other acts by the WSDOT affecting Subsidiary's rights or obligations under the Contract; (c) notice of any breach or claim of breach by Subsidiary; (d) any defense arising out of the exercise by the WSDOT of any right or remedy it may have with respect to the Contract, including the right to amend or modify the Contract and Subsidiary's obligations in any respect and the right to waive or delay the exercise of any rights it may otherwise have against Subsidiary; and (e) the benefit of suretyship defenses generally.

Parent represents and warrants that the execution and delivery of, and performance of the obligations contained in this Guaranty have been authorized by all appropriate action and will not constitute a breach of or contravene any agreement or instrument to which Parent is a party, and that this Guaranty is a valid and binding obligation of Parent enforceable against Parent in accordance with its terms.

The terms and conditions of the Contract are incorporated by reference, except that all references to the parties shall mean the State and Parent, all references to Subsidiary shall mean Parent, all references to the Contract shall be to this Guaranty, and notices to Parent shall be sent to the address set forth below instead of to the address set forth in the Contract.

[PARENT CORPORATION]

By: _____

Printed Name: _____

Title: _____

Address: _____

Date: _____

EXHIBIT D

EXCEPTIONS TO SCOPE OF WORK [OPTIONAL]

EXHIBIT E
LETTER OF CREDIT

Bank _____

_____, 200_

Irrevocable Letter of Credit

Number: _____

Amount: [US\$_,000,000]

To whom it may concern:

At the request and for the account of the State of Washington Department of Transportation we hereby establish our Irrevocable Letter of Credit Number _____ in your favor, available by draft(s) at sight on Bank _____, up to the aggregate sum of [\$_,000,000 (____ Million United States Dollars)], inclusive of any banking charges effective as of today's date and expiring on Acceptance of the System as defined in contract # ____ dated as of _____, __, 200_.

Partial drawings are permitted. Drafts drawn under this Letter of Credit must be accompanied by the following document:

A Certificate signed by the _____ to the effect that the amount drawn represents funds due and payable to you because of the following reason:

Nonperformance of the Vendor (_____) pursuant to contract #_____ dated as of _____, 200_ for designing, developing, implementing, operating and maintaining the new Statewide Tolling Customer Service Center.

We hereby agree with the drawers, endorsers and holders in due course of any draft under this Letter of Credit that such drafts shall be duly honored on presentation provided that all terms and conditions of the Letter of Credit have been complied with.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision) International Chamber of Commerce Publication Number 500, as modified from time to time.

Yours faithfully,

For and on behalf of

Bank _____

By: _____

Title: _____

EXHIBIT F

PERFORMANCE MEASURES AND LIQUIDATED DAMAGES TABLES

List of Tables

Table 1 – Liquidated Damages Schedule for Implementation.....	F-2
Table 2 – Liquidated Damages Schedule for Ongoing Operations	F-5

Table 1 – Liquidated Damages Schedule for Implementation

No.	Milestone Area	Description	Performance Measure	Reporting Frequency	Liquidated Damages
1.	Program Planning	Program Planning Milestone Complete	Completion of Qualifying Events for Milestone per the approved Program Schedule.	Upon completion	\$5,000 per Calendar Day for each Calendar Day that completion of Qualifying Events is delayed.
2.	Facilities	Facilities Establishment Milestone Complete	Completion of Qualifying Events for Milestone per the approved Program Schedule.	Upon completion	\$2,000 per Calendar Day for each Calendar Day that completion of Qualifying Events is delayed.
3.	Financial Accounting	Financial Accounting Milestone Complete	Completion of Qualifying Events for Milestone per the approved Program Schedule.	Upon completion	\$5,000 per Calendar Day for each Calendar Day that completion of Qualifying Events is delayed.
4.	Operations Preparation	CSC Requirements Trace Document	Submit and obtain WSDOT approval within 90 Calendar Days from Notice to Proceed.	Upon submission	\$5,000 per Calendar Day for each day the final document is not submitted per the approved schedule. If after review of the final document WSDOT determines the document to be incomplete and not final and notifies the Vendor as such in writing, the Vendor shall be assessed \$5,000 per Calendar Day for each day the final document is not resubmitted.
5.	Operations Preparation	Standard Operating Procedures	Submit and obtain WSDOT approval per the approved Program Schedule.	Upon submission	\$5,000 per Calendar Day for each day the final document is not submitted per the approved schedule. If after review of the final document WSDOT determines the document to be incomplete and not final and notifies the Vendor as such in writing, the Vendor shall be assessed \$5,000 per Calendar Day for each day the final document is not resubmitted.
6.	Operations Preparation	Operations Preparation Milestone Complete	Completion of Qualifying Events for Milestone per the approved Program Schedule.	Upon completion	\$5,000 per Calendar Day for each Calendar Day that completion of Qualifying Events is delayed.

No.	Milestone Area	Description	Performance Measure	Reporting Frequency	Liquidated Damages
7.	Systems Preparation	TCS Interface Control Document	Submit and obtain WSDOT approval per the approved Program Schedule.	Upon submission	\$3,000 per Calendar Day for each day the final Document is not submitted per the approved schedule. If after review of the final Document WSDOT determines the Document to be incomplete and not final and notifies the Vendor as such in writing, the Vendor shall be assessed \$5,000 per Calendar Day for each day the final Document is not resubmitted.
8.	Systems Preparation	Other Interface Control Documents	Submit and obtain WSDOT approval per the approved Program Schedule.	Upon submission	\$2,000 per Calendar Day for each day the final Documents is not submitted per the approved schedule. If after review of the final Documents WSDOT determines the Documents to be incomplete and not final and notifies the Vendor as such in writing, the Vendor shall be assessed \$3,000 per Calendar Day for each day the final Documents are not resubmitted.
9.	Systems Preparation	Systems Preparation Milestone Complete	Completion of Qualifying Events for Milestone per the approved Program Schedule.	Upon completion	\$5,000 per Calendar Day for each Calendar Day that completion of Qualifying Events is delayed.
10.	Start-Up	Test Plan	Submit and obtain WSDOT approval per the approved Program Schedule.	Upon submission	\$5,000 per Calendar Day for each day the final Documents is not submitted per the approved schedule. If after review of the final Documents WSDOT determines the Documents to be incomplete and not final and notifies the Vendor as such in writing, the Vendor shall be assessed \$5,000 per Calendar Day for each day the final Documents are not resubmitted.
11.	Start-Up	Implementation Milestone Complete and CSC Operations Commencement	Completion of Qualifying Events for Milestone and CSC Operations Commencement per the approved Program Schedule.	Upon completion	\$10,000 per Calendar Day for each Calendar Day that CSC Operations Commencement is delayed and that completion of Qualifying Events is delayed.
12.	Start-Up	Tolling Commence	Tolling Commence on SR 520 on time per approved Program Schedule.	Upon completion	\$50,000 per Calendar Day for each Calendar Day that Tolling Commencement is delayed.

No.	Milestone Area	Description	Performance Measure	Reporting Frequency	Liquidated Damages
13.	TNB Data Migration	Successful migration of data to new CSC System	<p>Migration completed per Program Schedule.</p> <p>99.999% successful completion of migration and population of production database based on automated conversion results and successful completion of testing procedures.</p> <p>Demonstrated reconciliation of account and financial information.</p>	Upon completion	\$25,000 per Calendar Day for each Calendar Day that successful migration is delayed.
14.	Acceptance Issued	Business Continuity Plans	Submit and obtain WSDOT approval per the approved Program Schedule.	Upon submission	\$5,000 per Calendar Day for each day the final Documents is not submitted per the approved schedule. If after review of the final Documents WSDOT determines the Documents to be incomplete and not final and notifies the Vendor as such in writing, the Vendor shall be assessed \$5,000 per Calendar Day for each day the final Documents are not resubmitted.
15.	Acceptance Issued	Acceptance Milestone Complete	Completion of Qualifying Events for Milestone per the approved Program Schedule.	Upon completion	\$10,000 per Calendar Day for each Calendar Day that completion of Qualifying Events is delayed.

Table 2 - Liquidated Damages Schedule for Ongoing Operations

#	SOW Section Number	SOW Section Name	Functional Area	Performance Measure	Reporting Frequency	Liquidated Damages
1.	2	Legal and Regulatory Requirements	Legal Compliance	Compliance with all Washington State laws.	Per event	Legal penalties/fines as assessed by law.
2.	3	Business Rules	Business Rules	Implementation of business changes to Business Rules and other configurable system parameters within forty-five (45) Business Days of authorization by WSDOT or per WSDOT approved schedule.	Monthly	\$5,000 per event.
3.	4	Program Management	Program Report	Deliver monthly report.	Monthly	None.
4.	5	Vendor Personnel Requirements	Key Program Staff	Provide all Key Program Staff as required in the Scope of Work.	Monthly	\$2,000 per vacant key staff member position per month.
5.	10	Automated System Functionality	System Availability	99.5% CSC System and communications infrastructure availability, excluding scheduled maintenance, on a 24 hour – seven days a week basis.	Monthly	\$1,000 for every 0.1% below the requirement.
6.	10	Automated System Functionality	Update Toll Rates	On schedule as requested by WSDOT.	Per event	100% of lost revenue per Calendar Day late plus \$10,000 per Calendar Day.
7.	13	Account Establishment	Opening Accounts	100% of accounts opened within one (1) Business Day of receipt of application.	Monthly	\$10 per Business Day for each unopened account.
8.	14	Account Management	Statements	100% of customer statements delivered within three (3) Business Days of end of statement cycle.	Monthly	\$10 per Business Day for each statement that is not delivered within 3 Business Days.

#	SOW Section Number	SOW Section Name	Functional Area	Performance Measure	Reporting Frequency	Liquidated Damages
9.	14	Account Management	Customer Request	100% of inquiries responded to within two (2) Business Days.	Monthly	\$250 per Business Day for each inquiry that is not responded to within 2 Business Days.
10	14	Account Management	Replenishment	100% of accounts with a valid replenishment method are replenished within one (1) Calendar Day of the account falling below the replenishment threshold.	Daily	\$1,000 per Calendar Day that replenishment is not completed.
11	14	Account Management	Account Status Changes	100% of customers whose account status has changed to suspended or closed notified within 1 Business Day.	Daily	\$1,000 per Calendar Day for each day that any customer is not notified.
12	15	Transponder Management	Transponder Inventory – provide adequate inventory of all types of transponders	All types of transponders available for distribution 100% of the time at all customer service locations.	Monthly	\$10,000 per each Business Day for which any type of transponder is not available.
13	15	Transponder Management	Order Fulfillment – ship Transponders with welcome packages	100% within three (3) Business Days of receipt of customer transponder order request.	Monthly	\$10 for each order that is unfulfilled within three (3) Business Days.
14	34	Toll Transaction Receipt and Validation	Error Resolution	100% of data errors (missing or corrupt data) researched and resolved within two (2) Calendar Days of notification of failed transmission.	Monthly	\$5,000 per event.
15	17	Toll Transaction Processing	Apply Toll Rate to Toll Transaction	Apply correct toll rate on 100% of all reconciled toll transactions according to the current toll schedule within one (1) Calendar Day.	Weekly	100% of lost revenue plus \$10,000 per day that the rates remain incorrect.

#	SOW Section Number	SOW Section Name	Functional Area	Performance Measure	Reporting Frequency	Liquidated Damages
16	17	Toll Transaction Processing	Process Toll Transponder Transaction to Accounts	100% of toll transactions processed by the end of the following Calendar Day after receipt from Toll Transportation Facilities.	Daily	\$1,000 per Calendar Day for each Calendar Day that transactions from an individual day are not processed.
17	17	Toll Transaction Processing	Manual Verification of Photo Enforced Toll Transactions	100% of photo-enforced toll transactions requiring human verification reviewed within three (3) Business Days of the date of the transaction.	Monthly	\$500 per Business Day for each Business Day that photo-enforced toll images from an individual day are not reviewed within three (3) Business Days.
18	17	Toll Transaction Processing	Posting Photo Transactions – Timeliness	100% of human readable photo- enforced toll transactions successfully matched to a customer initiated payment posted within one (1) Business Day of matching to payment.	Monthly	\$10 for each matched payment not posted within one (1) Business Day.
19	17	Toll Transaction Processing	Photo Enforced Toll Bill & Notice of Infraction – Timeliness	100% of photo-enforced toll bills and Notices of Infraction printed and mailed according to schedule defined in the Business Rules and posted to the jurisdictions determined by WSDOT.	Monthly	\$10 per Calendar Day for each bill or NOI not printed or mailed per the schedule.
20	17	Toll Transaction Processing	Photo Enforced Toll Bill & Notice of Infraction – Accuracy	99.99% of generated toll bills and NOI accurately display legible license plate image and the correct registered owner name and address.	Monthly	\$1,000 for each incorrect notice sent.

#	SOW Section Number	SOW Section Name	Functional Area	Performance Measure	Reporting Frequency	Liquidated Damages
21	18	Complaint Tracking and Resolution	Complaint Resolution	100% of customer complaints and correspondence researched, resolved and responded to within three (3) Business Days of receipt.	Monthly	\$50 for each complaint or correspondence that is not responded to within 3 Business Days.
22	18	Complaint Tracking and Resolution	Customer Service Satisfaction	80% of customers report an overall satisfaction score of “Satisfied” or “Very Satisfied” based upon an independent survey of customers.	Semi-annual	\$50,000 per failure.
23	19	Dispute and Adjudication Process Support	Dispute Processing	Respond to 100% of customer disputes within four (4) Business Days of receipt.	Monthly	\$50 per each dispute that is not responded to within four (4) Business Days.
24	19	Dispute and Adjudication Process Support	Respond to Court Information Requests	Respond to 100% of court information requests within 4 Business Days of receipt.	Monthly	\$500 for each Business Day that a court information request is not responded to within four (4) Business Days.
25	21	Customer Service Internet Services	Website Availability	The website shall be accessible 99.5% of the time; 24 hours a day, 7 days a week, excluding scheduled maintenance.	Monthly	\$1,000 for every 0.1% below the requirement.
26	22	Customer Service Representatives Phone Services	Call Handling – Dropped Calls	Percentage of abandoned calls not to exceed 0.1% of all incoming calls.	Weekly	\$500 per week per failure to meet the requirement.

#	SOW Section Number	SOW Section Name	Functional Area	Performance Measure	Reporting Frequency	Liquidated Damages
27	22	Customer Service Representatives Phone Services	Call Handling – Answering Calls	90% of calls presented by IVR to CSR answered within twenty (20) seconds during business hours.	Weekly	\$1,000 per month per failure to meet the requirement.
28	22	Customer Service Representatives Phone Services	Call Handling – Wait Time	Average wait time to speak with a CSR not to exceed two (2) minutes.	Monthly	\$1,000 per month per failure to meet the requirement.
29	23	Automated Customer Service Phone Services	Interactive Voice Response Availability	IVR availability of 99.5%; 24 hours a day, 7 days a week, excluding scheduled maintenance.	Monthly	\$1,000 for every 0.1% below the requirement.
30	24	Mail Processing Management	Handling Returned Mail	100% of returned mail, for which a new address is identified, shall be resent within three (3) Business Days of receiving the returned mail.	Monthly	\$10 each piece of returned mail for which a new address is provided that is not resent within three (3) Business Days.
31	25	Payment Processing	Timeliness of Payment Processing and Deposit	100% within twenty-four (24) hours of receipt of payment.	Weekly	\$1,000 per missed deposit.
32	25	Payment Processing	Investigate All Payment Failures	100% within two (2) Business Days of notification.	Monthly	\$1,000 per individual failure to meet the requirement per Business Day of delay
33	26	Sales Tax	Accuracy of Sales Tax	100% accurate application of destination based sales tax.	Monthly	Liable for any associated legal penalties and late fees for unpaid taxes plus \$10,000.

#	SOW Section Number	SOW Section Name	Functional Area	Performance Measure	Reporting Frequency	Liquidated Damages
34	28	Financial Accounting	WSDOT Financial System Reporting	99% of all required reporting within one (1) Business Day and 100% with needed adjustments.	Monthly	\$1,000 per individual failure to meet the requirement per Business Day of delay.
35	28	Financial Accounting	Periodic Audit of Financial Activity by WSDOT	100% compliance with WSDOT mandated requirements and Vendor internal requirements.	Per Event	If audit finds Vendor in noncompliance, Vendor shall have 10 Business Days to comply with specific audit findings, otherwise fines of \$1,000 per Business Day shall apply.
36	29	Reconciliation	Timeliness of Reconciliation Activity	100% of daily reconciliations completed by end of next Business Day.	Monthly	\$1,000 per individual failure to meet the requirement per Business Day of delay.
37	29	Reconciliation	Resolution of Differences in Reconciliation Totals	100% resolution within five (5) Business Days.	Monthly	\$1,000 per individual failure to meet the requirement per Business Day of delay.
38	31	Auditing Support Requirements	Annual Audit	Conduct annual SAS 70 audit.	Annual	\$5,000 per week if not completed on schedule.
39	31	Auditing Support Requirements	Annual Audit	Develop response to annual SAS 70 audit findings including schedule for implementation of any required actions.	Annual	\$5,000 per Business Day for each Business Day a required action is not implemented per the authorized schedule.
40	32	Standard Operating Procedures	Update Standard Operating Procedures	Updates completed within twenty-five (25) Business Days of changes of Business Rules, policies and program procedures.	Monthly	\$1,000 per individual failure to meet the requirement per Business Day of delay.
41	33	Reporting	Availability of Daily Reports	100% available by the next Calendar Day.	Monthly	\$100 per missing report.

#	SOW Section Number	SOW Section Name	Functional Area	Performance Measure	Reporting Frequency	Liquidated Damages
42	33	Reporting	Availability of Monthly Reports	100% available within five (5) Business Days of the end of the month.	Monthly	\$200 per missing report.
43	33	Reporting	Availability of Dashboard Status Information	99.5% availability; 24 hours a day, 7 days a week, excluding scheduled maintenance.	Monthly	\$500 for every 0.1% below the requirement.
44	34	System to System Interfaces	Compliance with ICD	100% of all required transmissions and acknowledgements completed every Business Day, per the requirements of the approved Interface Control Document for each interface (See System to System Interfaces section of Scope of Work).	Monthly	\$1,000 per each occurrence that the requirements of the ICD are not met, per Business Day of delay.
45	36	IT Services	System Anomalies	Provide report on anomalies and resolution within five (5) Calendar Days of detection.	Monthly	\$1,000 per individual failure to meet the requirement per Calendar Day of delay.
46	37	Security Management	Compliance with Security Plan	Full compliance, with corrective action taken within seven (7) Calendar Days of identification of non-compliance.	Monthly	\$5,000 per individual failure to meet the requirement per Calendar Day of delay.
47	37	Security Management	System Security	No internal or external security breaches.	Monthly	100% reimbursement of lost revenue, restitution to customers, and \$5,000 per event.
48	37	Security Management	Protection of Confidential Information	No unauthorized access to, or loss of, customer confidential information.	Monthly	100% reimbursement of lost revenue, restitution to customers, and \$10,000 per event.
49	37	Security Management	Funds Security	No lost or missing funds.	Monthly	100% reimbursement of lost funds, plus \$10,000 per event.

#	SOW Section Number	SOW Section Name	Functional Area	Performance Measure	Reporting Frequency	Liquidated Damages
50	41	Business Continuity	Significant Unplanned Events	Restore all Priority 1 identified functions to operations levels within twenty four (24) hours.	Per event	Forfeiture of monthly fees, per Calendar Day delayed, on a pro-rated basis Reimbursement of lost tolling revenue to WSDOT.
51	41	Business Continuity	Significant Unplanned Events	Restore all Priority 2 identified functions to operations levels within five (5) Business Days.	Per event	Forfeiture of monthly fees, per Calendar Day delayed, on a pro-rated basis Reimbursement of lost tolling revenue to WSDOT.
52	41	Business Continuity	Significant Unplanned Events	Restore all Priority 3 identified functions to operations levels within thirty (30) Business Days	Per event	Forfeiture of monthly fees, per Calendar Day delayed, on a pro-rated basis Reimbursement of lost tolling revenue to WSDOT.
53	41	Business Continuity	Suspension of Operations	Timely WSDOT access to all systems and data per requirements.	Per event	Forfeiture of monthly fees, per Calendar Day delayed, on a pro-rated basis Reimbursement of lost tolling revenue to WSDOT.

June 17, 2009

EXHIBIT G
LICENSES

June 17, 2009

EXHIBIT H
ESCROW AGREEMENT [OPTIONAL]